

EXHIBIT 6

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA * CRIMINAL NO. H-12-503
*
VERSUS * Houston, Texas
* July 18, 2018
JASON DANIEL GANDY * 8:30 a.m.

JURY TRIAL
BEFORE THE HONORABLE LEE H. ROSENTHAL
CHIEF UNITED STATES DISTRICT JUDGE
(Day 1)

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1 Appearances - Cont:

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4 Court Reporter:

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1 THE COURT: Good morning. Please be seated after
2 you state your appearances.

3 MS. ZACK: Sherri Zack and Kim Leo on behalf of the
4 United States, Your Honor.

5 MR. BUCKLEY: Good morning, Your Honor. Sean
6 Buckley and Dustan Neyland for Mr. Gandy.

7 THE COURT: All right. Thank you very much.

8 Let me begin by asking if the government has
9 related to the defendant, defense counsel the latest plea
10 offer that the government might be prepared to make. Do not
11 tell me what it is. Just tell me that you have conveyed it
12 to defense counsel.

13 MS. ZACK: Yes, Your Honor.

14 THE COURT: And have, Mr. Buckley, have you in turn
15 made sure that your client is fully aware of it and discussed
16 it with him, the advantages and disadvantages, his rights and
17 exposures?

18 MR. BUCKLEY: Yes, Your Honor.

19 THE COURT: And that he has made an informed
20 decision to continue to plead not guilty?

21 MR. BUCKLEY: Yes, Your Honor. And I think, to add
22 some context to that answer, throughout my representation, I
23 have covered those topics; and then most recently I have
24 conveyed the offer. So the discussion may not have occurred
25 all at once, but it has occurred over the time period that I

1 have been involved in this case.

2 THE COURT: And is there any benefit to be gained by
3 taking 15 minutes and having you and Ms. Zack meet with or
4 without your client and co-counsel to discuss anything
5 further? I am happy to give it to you if it would help. You
6 tell me.

7 MR. BUCKLEY: Unless the government's offer would
8 change from its last offer, then I don't believe that there
9 would be a benefit to that, Your Honor.

10 THE COURT: I wasn't sure because there had been
11 some late rulings that might have affected the discussion. I
12 didn't know one way or the other.

13 MS. ZACK: No, Your Honor.

14 THE COURT: "No" being it didn't affect it, or "no,"
15 you don't think there is any reason to continue discussion?

16 MS. ZACK: Both. It didn't affect it, and I don't
17 think there is any reason unless they would like to discuss
18 anything. We have made our offer, and that's where we sit.

19 MR. BUCKLEY: And we've, "we" meaning me, I have
20 discussed I think what our position would be for
21 counteroffer, which was rejected, and so I just think that --

22 THE COURT: Let's go forward.

23 And, Mr. Gandy, is it your decision to continue
24 to plead not guilty rather than plead guilty and get the
25 benefits under the guidelines that pleading guilty provides?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: All right. And that's based on your
3 discussions with counsel?

4 THE DEFENDANT: Yes.

5 THE COURT: And your family?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: All right. Thank you. You may be
8 seated, sir.

9 Okay. Have you had a chance to go through the
10 jury questionnaires to see if there is anybody here who you
11 know or who has some kind of background that might make them
12 not even worth bringing up?

13 MS. ZACK: Not yet, Your Honor.

14 THE COURT: Go ahead and do that real quick.

15 MR. BUCKLEY: Thank you.

16 THE COURT: And have the exhibit lists been marked
17 up to reflect and modified to reflect the Court's latest
18 ruling on the suppression motion?

19 MS. ZACK: Yes, Your Honor.

20 THE COURT: Did all counsel review the juror
21 information sheet, and what is the parties' best estimate now
22 on the length of the trial?

23 MS. ZACK: Your Honor, I don't believe that the
24 ruling really altered the time frame in any way.

25 THE COURT: I wasn't suggesting it did. Just remind

1 me what your estimate is.

2 MS. ZACK: I think the government should be done by
3 Friday afternoon is my hope.

4 THE COURT: Okay. I am guessing Monday.

5 MR. BUCKLEY: Yes, Your Honor. I think that we will
6 make the determination fairly quickly whether to rest at the
7 end of the government's case. If we go to Monday, it will be
8 brief, Your Honor.

9 THE COURT: Very good. Thank you.

10 Well, I have cleared my decks. I do have a
11 lunch meeting today, so we will interrupt jury selection for
12 that, sadly; but other than that, I have cleared my decks for
13 you all.

14 Given the amendments -- tell me when you are
15 done with what you are doing and then we will take up one
16 other thing. Tell me when you are ready.

17 MR. BUCKLEY: We're ready for the defense, Your
18 Honor. We haven't noticed anyone who we know or who we
19 think would not be worth bringing up.

20 THE COURT: Good.

21 Is that true for the government as well?

22 MS. ZACK: Just whether we know them, correct?

23 THE COURT: Or that there is something disqualifying
24 about them on the face that would make it not even worth
25 bringing them up.

1 MS. ZACK: I don't think, without further inquiry,
2 that would be the case.

3 THE COURT: Very good. Lisa, you want to get them
4 up.

5 MR. BUCKLEY: Your Honor, there is one matter before
6 the panel comes in that I want to address to the Court.

7 THE COURT: That's fine. Go ahead.

8 MR. BUCKLEY: Mr. Gandy has indicated that it's his
9 preference to wear his FDC clothing during the trial, against
10 my advice, but --

11 THE COURT: I am not going to permit it. I think
12 that is prejudicial to the jury. It conveys a signal that,
13 very visible signal that Mr. Gandy is already incarcerated.
14 That's true, but it doesn't -- it's not anything relevant to
15 the jury's decision, and it can have a prejudicial impact.
16 So unless I can understand a specific reason for it, I am not
17 going to permit it.

18 MR. BUCKLEY: Yes, Your Honor. May I confer with
19 Mr. Gandy for a moment?

20 THE COURT: You may.

21 (Mr. Buckley confers with Mr. Gandy)

22 THE COURT: Tell me when you are ready.

23 MR. BUCKLEY: We understand the Court's ruling, Your
24 Honor.

25 THE COURT: All right. Very good.

1 MS. ZACK: Your Honor, may I speak to two things we
2 would like to bring up briefly?

3 THE COURT: Lisa, go ahead and bring the panel up
4 while they're going through these things, please, so we can
5 get started.

6 CASE MANAGER: He is not dressed.

7 THE COURT: Oh, he is not dressed yet.

8 Will the Marshals take him and let him get
9 dressed. Do you have clothes for him?

10 MR. BUCKLEY: Yes, Your Honor. I delivered the
11 clothes this morning.

12 THE COURT: All right. Make sure he is dressed
13 promptly and back here as quickly as possible.

14 THE MARSHAL: We will, Your Honor.

15 THE COURT: Thank you. Thank you, Lisa.

16 Go ahead.

17 MS. ZACK: Okay. Two things, Your Honor.

18 First, in reviewing Your Honor's ruling -- and
19 I am not asking for reconsideration, I am not suggesting
20 anything of the sort -- I just wanted to point out because I
21 know how meticulous Your Honor is in drafting --

22 THE COURT: Just get to the point, Ms. Zack.

23 MS. ZACK: You cited, Your Honor, to page 4 -- I'm
24 sorry -- 549 in Murray in your decision. 549 in Murray is
25 contained within the dissent.

1 THE COURT: All right. So let's just make sure that
2 we have got the right cite. Go ahead and check that, please
3 right away. We'll check. Thank you.

4 MS. ZACK: Thank you, Your Honor.

5 THE COURT: It doesn't change the outcome.

6 MS. ZACK: I just wanted to point out --

7 THE COURT: And I still don't understand why the
8 government waited so long. I am sure it's frustrating for
9 you, Ms. Zack. It was equally frustrating for me. It's an
10 unnecessary issue, wholly unnecessary.

11 MS. ZACK: I don't disagree with Your Honor at all.

12 THE COURT: I know. Enough said.

13 MS. ZACK: We are just as frustrated.

14 THE COURT: Enough said.

15 MS. SACK: The other issue, Your Honor, and we
16 brought it to Mr. Buckley's attention, and I have case law
17 for Your Honor, there is a scrivener's error in the
18 indictment if the Court were to look at Count 5.

19 THE COURT: I have it right here. What page?

20 MS. ZACK: 4.

21 THE COURT: February indictment of 2018?

22 MS. ZACK: Yes, Your Honor.

23 THE COURT: Got it.

24 MS. ZACK: In Count 5 it currently reads November 1,
25 2006 to December 27th, 2006. Those should both be 5s, not

1 6s. And I have case law to suggest that that is not a
2 constructive amendment.

3 THE COURT: Any objection?

4 MR. BUCKLEY: Yes, Your Honor. We do object. I
5 understand it may not be a constructive amendment, but I do
6 believe it's a prejudicial -- it would constitute a
7 prejudicial variance.

8 THE COURT: Why?

9 MR. BUCKLEY: In the sense that on the face of the
10 indictment, it was our belief that the government's proof
11 that we anticipated at trial would not be sufficient to
12 convict on that count. And that relates to the anticipated
13 defensive strategy in this case as to that count, and I
14 learned about this yesterday. I think, I believe it was
15 yesterday. So that's the objection. It is surprising and
16 prejudicial as to our presentation of the defense, Your
17 Honor.

18 MS. ZACK: May I respond, Your Honor?

19 THE COURT: Yes.

20 MS. ZACK: This indictment has been in play since
21 February of 2018 this year. Defense counsel has always been
22 in possession of the dates of birth of the victims. It would
23 be a factual impossibility, and I don't believe that Mr.
24 Buckley would deny that he knew that, that if the dates were
25 2006. I mean, it's an obvious error. It was not -- it

1 doesn't change the elements of the crime charged. It might
2 have at some point been the subject of a motion to dismiss or
3 a motion for bill of particulars or some such other thing,
4 but it is absolutely a typographical error that was made. We
5 know -- we knew when we indicted the defendant how old the
6 victim was. The victim's date of birth doesn't change, and
7 it would be a factual impossibility to be under 18 in 2006.

8 THE COURT: I will grant the variance with the
9 change. I am not sure it is a variance.

10 MR. BUCKLEY: Understood, Your Honor.

11 MS. ZACK: I have three copies for the Court, if
12 Your Honor would like, of the corrected version for use
13 throughout the trial.

14 THE COURT: All right. Thank you.

15 MR. BUCKLEY: Your Honor, Ms. Zack and I were having
16 a discussion about voir dire prior to Your Honor's appearance
17 this morning. I think that we would be willing to waive our
18 individual voir dires if the Court would be willing to do the
19 entire voir dire. And Ms. Zack may have a particular issue
20 with that.

21 THE COURT: Are you okay with that?

22 MS. ZACK: I am, Your Honor, subject to if there is
23 an area that we believe Your Honor had not covered
24 thoroughly.

25 THE COURT: But you still get to participate in voir

1 dire up here individually, No. 1.

2 MS. ZACK: Absolutely.

3 THE COURT: And No. 2, I will ask you if there is
4 any additional question that should be asked either of
5 individual members of the panel or the panel as a whole
6 before we shut it down.

7 MS. ZACK: Absolutely. That would be fantastic.

8 THE COURT: I am happy to do it.

9 MS. ZACK: Thank you, Your Honor. We greatly
10 appreciate it.

11 THE COURT: Very few people say that. It's usually
12 the other way: What, you are not going to let me do more?

13 MR. BUCKLEY: I reported the pleasant experience I
14 had previously with that, and I think that it was very
15 efficient.

16 THE COURT: The use of the word "pleasant" is a
17 marvelous choice. Thank you.

18 MR. BUCKLEY: Thank you, Your Honor.

19 THE COURT: The Court notes that Mr. Gandy is back
20 with his non-jail clothing on. Thank you.

21 MS. ZACK: Your Honor, can I bring something to the
22 Court and defense counsel's attention?

23 THE COURT: Yes, ma'am.

24 MS. ZACK: I looked at names when you asked us to.
25 I do want to bring up one thing. In going through them now

1 and looking at people's occupations, it appears that Juror
2 No. 19 is a professor of zoology at Rice University.

3 THE COURT: So.

4 MS. ZACK: I mentored a group of fifth graders and
5 arranged for an interview with them. It was with a zoology
6 professor at Rice. And through the life of me I don't --

7 THE COURT: I don't think that causes any problem.

8 MS. ZACK: She may recognize me.

9 THE COURT: It doesn't matter. That is not the kind
10 of contact or acquaintanceship that we are worried about
11 here. But thank you for letting me know.

12

13 (Jury panel enters courtroom)

14

15 THE COURT: Good morning, ladies and gentlemen.
16 Please be seated.

17 JURY PANEL: Good morning.

18 THE COURT: It is a pleasure to welcome you to your
19 courthouse, this courtroom and this phase of your jury
20 selection.

21 My name is Lee Rosenthal. I am one of the
22 trial judges here in the Houston Division of the Federal
23 Courts for the Southern District of Texas, and I have the
24 great honor of being the Chief Judge of district. And it is
25 a real pleasure, as I said, to welcome you. It is a pleasure

1 for us and for the attorneys whose job it is to present this
2 case to those of you selected as jurors for your deliberation
3 and decision.

4 I know it is not a pleasure for all or most of
5 you. We all know that your presence here today is not your
6 first choice of how to spend this midsummer morning in the
7 middle of the week in the middle of July in Houston, Texas.
8 We know that some of you got up very early this morning and
9 drove a long way because Texas is big and this division alone
10 takes up 13 counties. The entire district takes up about
11 30-some counties.

12 We are one of the biggest districts in the
13 country. We go all the way down to Brownsville, Laredo and
14 Corpus Christi. We cover Galveston and Victoria and back to
15 Houston. And you can tell from that description just what a
16 diverse and interesting district that is.

17 But you are here in Houston, and you are here
18 to help us select a jury to try a criminal case. And
19 although I know that your presence here is at least
20 inconvenient, I hope very much that at the end of this
21 process you will understand more than you did when you came
22 in or at least have a renewed appreciation for what you
23 already knew, that jury duty is not merely an obligation of
24 citizenship in this country, it is a privilege, and I mean it
25 in this way.

1 The fact that our courtrooms are open to
2 anybody, citizens, press, anybody, the fact that we have a
3 court reporter here taking down a complete, word-for-word,
4 honest record of everything said that anybody can read, that
5 kind of transparency, the fact that we assemble juries made
6 up of citizens who don't know each other necessarily, don't
7 know the parties, who independently assess important matters
8 like guilt or innocence, that kind of transparency, that kind
9 of citizen participation, we don't stack decks, those are
10 hallmarks of democracy, and they require citizen
11 participation to protect and to defend it. And these are not
12 trivial rights. The right to a jury trial is so important
13 that it's in our Constitution, and we as judges are sworn to
14 enforce it and apply it fairly in every case. You, as
15 members of the jury panel, are an indispensable part of that.

16 We all pay taxes. Some of us, ourselves, our
17 families serve in the military, and we vote, I hope; but
18 beyond that, we really don't do much as citizens, we really
19 don't.

20 This is your opportunity to serve today, and we
21 are delighted to have given you that opportunity, because
22 what you help us do is fulfill the promise we make to every
23 party, civil or criminal, citizen or not, regardless of race,
24 gender, sexual orientation, ethnicity, anything else. That
25 promise is this: You will be entitled to a jury. You will

1 get a jury that is as best we can ensure fair and impartial
2 for your case.

3 Now, what do I mean by a fair and impartial
4 jury? First question. A fair and impartial jury is made up
5 of jurors who do not start out with a preconceived or
6 predetermined idea of how the case ought to end. You start
7 out with an open mind and you listen very carefully to all of
8 the evidence. At the end of that evidence you make up your
9 mind. You deliberate together based on only three things:

10 No. 1, my instructions on the law. Even if you
11 disagree with them, you have to apply the law as I instruct
12 you it is. Even if you were charged, if you were president,
13 you were whatever, you would write it differently, you have
14 to be able to apply it as Congress enacted it and courts have
15 interpreted it.

16 No. 2, you base your decision on the evidence
17 in this courtroom, on the documents that have been admitted
18 into evidence and on the testimony from the witness stand.
19 You do not base it on what you remember reading on TV or
20 listening to on television, reading in the newspaper or
21 things that happened to you or members of your family or your
22 close personal friends. You base it on the evidence that was
23 presented here in court.

24 No. 3, yes, you use your common sense, but you
25 don't substitute things that happened elsewhere to other

1 people, including yourselves. You don't allow yourselves to
2 be swayed by bias or prejudice or sympathy in any way.
3 That's a fair and impartial jury.

4 And what we do during jury selection, the
5 reason we have so many of you, because we are only going to
6 pick a certain number, is because not every juror is a fair
7 and impartial juror for every kind of case.

8 Let me give you an example. Let's assume that
9 this was a civil case, not a criminal case, which it's not,
10 and let's assume that it involved a car accident in which
11 somebody rear-ended somebody else and the result was a back
12 injury in the car that got hit, okay, you with me?

13 So let's assume for the purpose of this example
14 that within the last year you were in a very similar
15 accident, had a very similar injury, or one of your children
16 or your parents or your spouse or significant other or your
17 very best personal friend was the person who got it hit and
18 had the back injury. You would probably find it very
19 difficult to separate yourselves, your own feelings from what
20 the case was about. You would not be a fair and impartial
21 juror for that case, but you might be a terrific juror for
22 the breach of contract case that another judge was trying
23 down the hallway.

24 So we have this process that we are about to
25 launch called the voir dire examination to help us identify

1 who is not fair and impartial, who would have a hard time
2 being the kind of fair and impartial juror I've described.
3 And here's how that process works: So "voir dire" is
4 actually the Texas pronunciation -- we're the only people who
5 say it that way -- of two words that started out as French
6 words.

7 Voir, v-o-i-r, or voir, most people call it
8 "voir deer." We think that's sissified or high-fallutin'.
9 Voir dire, voir means to see. Dire means to speak, to see
10 and to speak.

11 So what is it that you are going to be seeing
12 in this phase? It's not evidence. Nothing you hear in this
13 part of the proceeding is evidence in the case. That comes
14 later when we have our jury. And you are not going to be
15 hearing any instructions on what the law is. That, too,
16 comes later.

17 What you get now is a kind of a handshake
18 introduction to the people the case involves and the issues
19 the case involves. That's what you will see. I'll introduce
20 you to the lawyers who will be representing the parties, to
21 the representatives of the parties, the parties themselves,
22 and I will give you a description, not evidence, a summary of
23 what the parties' positions on the facts are, what the case
24 is about, just the subject matter. And then you will speak,
25 to see and to speak. You will tell us, in response to a

1 series of questions I ask, if there is anything about the
2 issues, the case, the people or the way in which we insist,
3 the rules of the road, if you will, for any criminal case
4 that raise a concern on your part about your ability to be
5 fair and impartial if you were picked for this jury. That's
6 what we're doing. It's an important but very limited
7 purpose, but it is important.

8 So here's the mechanics of how we proceed: All
9 of the questions I ask you, ladies and gentlemen, are going
10 to be in a format that will not ask you or call on you to
11 answer it at that point. I will ask a question along the
12 following lines: Is there any member of the jury panel who,
13 is there any member of the panel who's close, very close
14 personal friends and members of your immediate family who?

15 If any of the concerns or points of the
16 question applies to you or could, raise your hand, okay. And
17 when I recognize you, stand up so I know you're ready to talk
18 and I know who you are, and in a loud voice, because this is
19 a big courtroom with lousy acoustics unless you have a
20 microphone, in a big voice give me just your jury number.
21 Don't give me your name; don't answer the question.

22 When we finish this section of the voir dire,
23 the questions asked to you as a group, I will ask those who
24 raised their hand in response to any question to come up here
25 to the bench and with only me and the lawyers up here tell me

1 why you raised your hand, and we may ask some additional
2 questions then.

3 And I do it this way for a couple of reasons.
4 One reason is because it is not always easy in response to
5 some of the questions. And we are not being nosey. We are
6 just trying to get in issues that experience, centuries of
7 experience has taught need to be raised and explored to
8 expose, make us aware of issues that might present problems
9 for us as we try to deliver on our promise of a fair and
10 impartial jury in every case.

11 But some of these questions call for
12 information that we don't necessarily want to divulge in
13 front of a group of people we haven't met before or even if
14 we have, so we encourage your open and frank participation in
15 this process. And it won't work if you're not forthcoming,
16 open and frank. I have you come up here, and in the
17 relatively privacy of just us, to explain why, and I will
18 only refer to you throughout by your number.

19 I'm not reducing you to a number, I'm
20 protecting your privacy, because the record is available to
21 all. Your names, your contact information is available to no
22 one. We do not share it, and we do not reveal it on a
23 publicly-available transcript.

24 So I will call you up a row at a time; and when
25 we finish that, the lawyers and I will confer, we will have a

1 jury and we'll proceed with the rest of the case. So that is
2 our process, that's our purpose; and as you can tell, none of
3 it works, as I said, without your full participation.

4 If you are uncertain that you are indeed among
5 those a particular question is meant to draw response from,
6 but you're not sure, err on the side of responding.

7 Now, having said that and without detracting
8 from it in the slightest, this is not an invitation for you
9 to get creative and come up with a really good reason why you
10 just can't be there. And there are about three important
11 reasons for that.

12 First, if you are trying to get out of jury
13 service, it's a lousy way to do it. This case is anticipated
14 to take maybe a week, maybe. If you are not chosen for this
15 case, you would remain in the pool and the judge who has a
16 four-week trial down the hall may find you super. So it is a
17 really clumsy way of trying to get out of jury duty.

18 But more importantly, ladies and gentlemen,
19 that's not why you're here. That kind of approach wastes the
20 time of all of us. And look around at how many people and
21 how much time is represented in this room. We will respect
22 that time and we will be as thorough and as efficient both as
23 we possibly can be. Don't waste our time, and don't waste
24 the importance of this process in a trial and of your
25 participation in this process.

1 All right. Enough of the civic lesson. Let's
2 get to the specifics. As I said, this is a criminal case.
3 You've heard all of these things before, the very basis of
4 the rights that we guarantee to every person charged with a
5 crime who comes into the courts to be tried; but I want to be
6 sure that you're reminded of these basic rights and that none
7 of you have an issue applying them.

8 In a criminal case in any court in the United
9 States of America, everyone brought into court as a
10 defendant, as I said, regardless of race, religion,
11 nationality, sexual orientation, sex, anything else, everyone
12 is innocent unless and until proven guilty.

13 In some systems of the world you're charged
14 with a crime, you're presumed guilty before there is any
15 proof at all. We do not follow that system. We have the
16 opposite presumption. Everyone, including the defendant, is
17 innocent of any crime that they're charged with; and they are
18 innocent throughout this proceeding unless and until the
19 government, the prosecution proves guilt as to every element
20 of the offenses that the defendant is charged with beyond a
21 reasonable doubt.

22 Okay. Everybody's heard that, right, the
23 presumption of innocence until and unless proof of guilt is
24 established beyond a reasonable doubt. That is not the same
25 as beyond a shadow of a doubt. A shadow of a doubt is

1 absolute certainty. That's not required. But it must be
2 beyond a reasonable doubt.

3 When money is involved in a civil case, it is
4 by a preponderance of the evidence; technical term, 51
5 percent. Beyond a reasonable doubt goes beyond that. It's
6 more. It is proof that would satisfy you in making a
7 decision in the most important of your own affairs.

8 Is there anybody in the jury panel who, without
9 hearing a word of what the case is about, who it involves,
10 anything like that, would have difficulty in applying this
11 basic rule that sitting here today the defendant is innocent
12 of the charges and that throughout the case the government
13 has the burden of proving guilt beyond a reasonable doubt in
14 order to secure a conviction?

15 Anybody on the first row have trouble applying,
16 they think that they might have a difficulty applying that
17 standard?

18 (No Response)

19 THE COURT: Second row?

20 (No Response)

21 THE COURT: Okay. My depth perception is not what
22 it used to be.

23 Third row?

24 (No Response)

25 THE COURT: Fourth row?

1 (No Response)

2 THE COURT: And the last row, anybody at all?

3 (No Response)

4 THE COURT: Thank you.

5 Is there anybody in the panel who is catching
6 themselves thinking right now, jeez, where there's smoke,
7 there's got to be fire. The defendant wouldn't be here if he
8 hadn't done something criminal. Anybody catch themselves
9 thinking that?

10 I see one hand, a couple hands.

11 PROSPECTIVE JUROR NO. 32: 32.

12 THE COURT: You modeled the behavior. That's
13 exactly the right way to do it.

14 PROSPECTIVE JUROR NO. 34: 34.

15 THE COURT: Anybody else?

16 PROSPECTIVE JUROR NO. 37: 37.

17 THE COURT: Yes, sir. I see one more hand.

18 PROSPECTIVE JUROR NO. 47: 47.

19 THE COURT: Thank you.

20 Anybody else?

21 (No Response)

22 THE COURT: Thank you.

23 In a federal case -- some of you have served in
24 state court on juries in criminal cases. In a federal case,
25 the jury is not involved in any way in punishment. That is

1 entirely up to the Court later. If and only if the defendant
2 is found guilty beyond a reasonable doubt, the jury has
3 nothing to do with punishment, considers guilty or not
4 guilty, and no consideration of punishment should enter into
5 any deliberations.

6 Is there anybody on the panel who might have
7 difficulty applying that standard?

8 (No Response)

9 THE COURT: I see no hands. Thank you.

10 I think you have also all heard the term that
11 someone "has been indicted." An indictment is just the way a
12 case gets to court. It is no evidence at all of anyone's
13 guilt. It's the mechanism used.

14 Is there anybody who believes that just because
15 the indictment has been issued, the defendant must, again,
16 must be guilty of what the indictment alleges? Anybody have
17 that belief going in?

18 I see one hand. Thank you. Go ahead.

19 PROSPECTIVE JUROR NO. 37: 37.

20 THE COURT: Thank you.

21 Anybody else?

22 (No Response)

23 THE COURT: Thank you.

24 There are a couple of other basic rules of
25 criminal cases I wanted to go over with you. Because the

1 burden is entirely on the prosecution, the government, to
2 prove guilt beyond a reasonable doubt, a defendant has no
3 obligation whatsoever to prove his or her own innocence,
4 none. Defendant does not have to produce any evidence.
5 That burden is all on the government.

6 Defendant is not required to testify. Indeed,
7 it is just the opposite. Our Constitution protects every
8 defendant from having to testify in court in a case against
9 that defendant. It is the privilege against self
10 incrimination. You've heard about that.

11 And it is such a vital protection that it is in
12 our Constitution, and every jury in every criminal case gets
13 the instruction: If the defendant does not testify, you may
14 not consider that fact for any purpose in deciding guilt or
15 innocence.

16 So we have these two basic instructions: If
17 the defendant produces no evidence or less evidence than the
18 government, you may not consider that or hold it against the
19 defendant in deciding guilt or innocence.

20 Is there anyone on the panel who would have
21 difficulty doing that?

22 (No Response)

23 THE COURT: I see no hands.

24 The defendant has no obligation to testify in
25 any criminal case. Is there anybody on the defendant -- on

1 the jury panel -- excuse me -- who would have difficulty
2 following the instruction that if the defendant does not
3 testify, you may not consider that fact in deciding guilty or
4 not guilty? Is there anybody who would have difficulty in
5 applying that rule?

6 (No Response)

7 THE COURT: Let me ask that a little bit more
8 searchingly. If the defendant says nothing, is there anybody
9 who catches himself or herself thinking, well, if he wasn't
10 guilty, he would tell us, he or she would testify?

11 I see one hand.

12 Anybody else?

13 PROSPECTIVE JUROR NO. 58: 58.

14 THE COURT: 58?

15 PROSPECTIVE JUROR NO. 58: Yes, ma'am.

16 THE COURT: Yes, sir.

17 PROSPECTIVE JUROR NO. 53: 53.

18 THE COURT: Thank you.

19 PROSPECTIVE JUROR NO. 54: 54.

20 THE COURT: Thank you.

21 Anybody else?

22 (No Response)

23 THE COURT: Thank you very much, ladies and
24 gentlemen.

25 Is there anybody on the panel who at this

1 stage -- and again, you've heard nothing about even what the
2 case concerns -- who would have trouble, who would at any
3 point be looking at the defense and the defense counsel and
4 saying, you have to prove your innocence to me, when the law
5 requires and my instructions would make clear the government
6 has the burden of proving guilt throughout the prosecution.
7 The defense has no obligation at all to prove innocence. Is
8 there anybody who would have difficulty applying that?

9 (No Response)

10 THE COURT: Thank you very much, ladies and
11 gentlemen. I see no hands.

12 I am going to go now give you a brief summary
13 of what the case involves. It's only a summary; it's not
14 evidence; it's not instruction on the law at all; but this is
15 your handshake introduction to who the case involves and what
16 it's about.

17 This case presents allegations that the
18 defendant, Mr. Jason Daniel Gandy -- Mr. Gandy, would you
19 please rise. Mr. Gandy is standing up before you, ladies and
20 gentlemen. Is there any member of the panel who believes
21 they know Mr. Gandy or recognize him in any way?

22 (No Response)

23 THE COURT: I see no hands. Thank you. You may be
24 seated, sir.

25 Mr. Gandy is represented in this case by two

1 attorneys, Mr. Sean Buckley. Mr. Buckley is standing.

2 Anybody recognize him?

3 (No Response)

4 THE COURT: And Mr. Dunstan -- Dustan -- I'm sorry.

5 I'm added an "n." -- Neyland

6 Anybody believe they recognize Mr. Neyland?

7 (No Response)

8 THE COURT: Thank you.

9 The prosecution in this case is represented by
10 lawyers in the United States attorneys office. They are Ms.
11 Sherri Zack, who is standing before you, and Ms. Kimberly
12 Leo, who is standing before you.

13 Does anybody recognize either of these two
14 individuals?

15 (No Response)

16 THE COURT: Again, I see no hands.

17 Would you introduce the members of your team
18 who are at counsel table with you.

19 MS. ZACK: Yes, Your Honor. This is Special Agent
20 Juanae Johnson and paralegal Patrice Warren.

21 THE COURT: Thank you.

22 And Ms. Johnson is with, Agent Johnson is with?

23 MS. ZACK: Homeland Security Investigations, Your
24 Honor.

25 THE COURT: All right. Thank you.

1 Anybody believe they recognize or know the
2 individuals who are standing?

3 (No Response)

4 THE COURT: You may be seated. Thank you.

5 As I have said, Ms. Zack and Ms. Leo are
6 Assistant United States attorneys in the Southern District of
7 Texas.

8 Our U.S. Attorney is Mr. Ryan Patrick. Is
9 there anybody who knows Mr. Patrick?

10 (No Response)

11 THE COURT: Is there anybody who knows anyone who is
12 a member of the United States attorney's office in the
13 Southern District of Texas, anybody in the panel?

14 I see one hand.

15 PROSPECTIVE JUROR NO. 52: 52.

16 THE COURT: 52. Thank you, sir.

17 Is there any member of the panel -- I'm sorry.
18 A couple of others raising.

19 PROSPECTIVE JUROR NO. 25: 25.

20 THE COURT: Thank you 25.

21 Is there any member of the panel who themselves
22 has ever been a part of any agency, department, firm that
23 does prosecution work? That can be a U.S. attorney's office,
24 it can be a district attorney's office, it can be a county
25 attorney's office, it can be a state attorney general, it can

1 be the Department of Justice.

2 (No Response)

3 THE COURT: Is there any member of the panel who
4 themselves has ever been a part of any prosecution office?

5 (No Response)

6 THE COURT: I see no hands.

7 Is there any member of the panel who has
8 members of your immediate family or your very close personal
9 friends who are or in the past have been part of any
10 prosecution office or agency, state or federal, local, any?

11 I see several hands. Let me start with the
12 first row.

13 PROSPECTIVE JUROR NO. 9: Juror No. 9.

14 PROSPECTIVE JUROR NO. 6: No. 6.

15 THE COURT: 6, 9. Anybody else on the first row?

16 (No Response)

17 THE COURT: Second row?

18 (No Response)

19 THE COURT: Third row?

20 PROSPECTIVE JUROR NO. 35: 35.

21 THE COURT: Thank you.

22 PROSPECTIVE JUROR NO. 37: 37.

23 THE COURT: Thank you.

24 PROSPECTIVE JUROR NO. 44: 44.

25 THE COURT: Thank you.

1 Next rows?

2 PROSPECTIVE JUROR NO. 46: 46, ma'am.

3 THE COURT: Thank you.

4 PROSPECTIVE JUROR NO. 55: 55.

5 THE COURT: Thank you.

6 Anybody else?

7 (No Response)

8 THE COURT: Thank you very much.

9 Is there any member of the panel who yourselves
10 have done in the past or are now working for any law firm,
11 agency, department that does any kind of criminal work,
12 investigation, defense work, any kind of criminal law work?
13 I see a couple hands. And this is a question about
14 yourselves.

15 PROSPECTIVE JUROR NO. 33: 33.

16 THE COURT: Thank you.

17 PROSPECTIVE JUROR NO. 54: 54.

18 THE COURT: Thank you.

19 PROSPECTIVE JUROR NO. 44: 44.

20 THE COURT: Anybody else?

21 PROSPECTIVE JUROR NO. 59: 59, ma'am.

22 THE COURT: Yes, sir.

23 PROSPECTIVE JUROR NO. 34: 34.

24 THE COURT: Thank you.

25 Anybody else?

1 (No Response)

2 THE COURT: Are there any members of the panel who
3 have members of your immediate family or very close personal
4 friends who are now or who have in the past done any kind of
5 criminal law work?

6 I see several hands. Starting with the second
7 row because I don't see any in the first. Yes.

8 PROSPECTIVE JUROR NO. 19: 19.

9 THE COURT: Thank you.

10 Anybody else in that row? Yes, ma'am.

11 PROSPECTIVE JUROR NO. 39: 39.

12 THE COURT: Thank you.

13 I see a hand back there.

14 PROSPECTIVE JUROR NO. 46: 46, ma'am.

15 THE COURT: Thank you.

16 PROSPECTIVE JUROR NO. 43: 43.

17 THE COURT: Thank you.

18 PROSPECTIVE JUROR NO. 44: 44.

19 THE COURT: Thank you.

20 Anybody else?

21 PROSPECTIVE JUROR NO. 59: 59, ma'am.

22 THE COURT: 59.

23 PROSPECTIVE JUROR NO. 57: 57.

24 THE COURT: Thank you.

25 PROSPECTIVE JUROR NO. 55: 55.

1 THE COURT: Thank you.

2 PROSPECTIVE JUROR NO. 54: 54.

3 THE COURT: Thank you.

4 Anyone else?

5 (No Response)

6 THE COURT: Thank you.

7 Is there any member of the panel who has done
8 themselves now or in the past any kind of law enforcement
9 work?

10 Yes, sir.

11 PROSPECTIVE JUROR NO. 34: 34, ma'am.

12 THE COURT: Thank you.

13 PROSPECTIVE JUROR NO. 33: 33.

14 THE COURT: Thank you.

15 Anyone else?

16 (No Response)

17 THE COURT: I am going to expand this question to
18 friends and family members. Remember, immediate family,
19 close personal friends. Anybody who members of your
20 immediate family or very close personal friend is now or has
21 in the past worked in law enforcement?

22 Yes, sir.

23 PROSPECTIVE JUROR NO. 1: No. 1.

24 THE COURT: Thank you.

25 Yes, ma'am.

1 PROSPECTIVE JUROR NO. 10: No. 10.

2 THE COURT: Okay. Remember to stand up.

3 PROSPECTIVE JUROR NO. 10: No. 10.

4 THE COURT: That's even better. Thank you, ma'am.

5 Second row.

6 PROSPECTIVE JUROR NO. 18: No. 18.

7 THE COURT: Thank you, sir.

8 Yes. Go ahead.

9 PROSPECTIVE JUROR NO. 23: No. 23.

10 THE COURT: Thank you.

11 Yes, sir.

12 PROSPECTIVE JUROR NO. 34: 34, ma'am.

13 THE COURT: 34?

14 PROSPECTIVE JUROR NO. 34: Yes, ma'am.

15 THE COURT: Thank you.

16 PROSPECTIVE JUROR NO. 35: 35.

17 THE COURT: Yes, ma'am. Thank you.

18 PROSPECTIVE JUROR NO. 40: No. 40.

19 PROSPECTIVE JUROR NO. 44: No. 44.

20 THE COURT: Thank you.

21 PROSPECTIVE JUROR NO. 59: 59, ma'am.

22 THE COURT: All right. Thank you.

23 Anybody else?

24 PROSPECTIVE JUROR NO. 54: 54.

25 THE COURT: Anyone else?

1 Thank you.

2 Let me now get to a couple other questions
3 general and then I'll introduce you to what the case is
4 about.

5 Is there any member of the family -- family --
6 any member of the panel -- and this is an unusual question,
7 so listen carefully, not that you haven't been. Is there any
8 member of the panel who themselves or whose members of your
9 immediate family or very close personal friends, any one of
10 those categories, has had a personal interest in the outcome
11 of a criminal case?

12 That's a broad question. A personal interest
13 in the outcome of a criminal case. That doesn't mean, boy,
14 this is interesting when you see it in the newspaper. It
15 means you or a member of your family or close personal friend
16 was a victim of a crime. It means you were a witness. It
17 means you were accused. Those are three of the categories,
18 yourselves, members of your immediate family, very close
19 personal friends, anyone who has had or has a personal
20 interest in the outcome of a criminal case?

21 First row.

22 PROSPECTIVE JUROR NO. 2: No. 2.

23 THE COURT: 2.

24 PROSPECTIVE JUROR NO. 3: 3.

25 THE COURT: Thank you. Anybody else on the first

1 row?

2 (No Response)

3 THE COURT: 2 and 3.

4 All right. Second row. Yes, ma'am.

5 PROSPECTIVE JUROR NO. 20: No. 20.

6 THE COURT: Thank you.

7 Anybody else on that row?

8 (No Response)

9 THE COURT: Third row? Yes, sir.

10 PROSPECTIVE JUROR NO. 40: No. 40.

11 THE COURT: Thank you, sir.

12 Anybody else in that row?

13 (No Response)

14 THE COURT: Last rows?

15 PROSPECTIVE JUROR NO. 65: 65.

16 THE COURT: Thank you, ma'am.

17 Anybody else?

18 (No Response)

19 THE COURT: Thank you.

20 Lots of us have encounters with law

21 enforcement, and they can be, they can run the gamut; and I
22 am going to ask you about two types. Is there any member of
23 the panel who yourselves or members of your immediate family
24 or very close personal friends has had such an unpleasant
25 encounter with law enforcement that it would tend to affect

1 the way you look at any member of any law enforcement agency
2 in a negative way?

3 Is the question clear?

4 All right. Anybody on the first row believe
5 that they fall into this category?

6 (No Response)

7 THE COURT: Second row?

8 PROSPECTIVE JUROR NO. 21: No. 21.

9 THE COURT: 21. Thank you, ma'am.

10 Anybody else?

11 PROSPECTIVE JUROR NO. 58: 58.

12 THE COURT: 58. Thank you.

13 Yes, sir.

14 PROSPECTIVE JUROR NO. 45: 45.

15 THE COURT: Thank you.

16 Anybody else?

17 (No Response)

18 THE COURT: Let me ask the flip side. Is there any
19 member of the panel who themselves, members of your immediate
20 family or very close personal friends who has had such a
21 great experience or formed such a positive impression of any
22 law enforcement agent, officer or representative that it
23 would tend to make you give an extra kind of presumption of
24 credibility to any witness who was a law enforcement agent or
25 officer without listening to the individual testimony of that

1 person? Is there anybody who would fall into that category?

2 (No Response)

3 THE COURT: I see no hands. Thank you very much.

4 Is there anybody who would have difficulty
5 treating the testimony of a law enforcement officer the same
6 way you would the testimony of anyone else; that you would
7 listen very carefully and make the judgment on the
8 credibility of that testimony and witness based on what you
9 hear from the witness stand? Can everybody approach the
10 witnesses in the same fashion as I've just described?
11 Anybody believe they would have difficulty doing that?

12 I see one hand.

13 PROSPECTIVE JUROR NO. 34: 34.

14 THE COURT: Anybody else?

15 PROSPECTIVE JUROR NO. 31: 31.

16 THE COURT: Thank you, sir.

17 Anybody else?

18 (No Response)

19 THE COURT: Thank you.

20 All right. I am going to now ask you about one
21 other area that's general. Is there any member of the panel
22 who, or your immediate family or very close personal friends,
23 who is now or in the past has had a dispute with or been
24 involved in experiences with federal government agencies that
25 are difficult or unpleasant in a way that would make you lean

1 against the government or witnesses from any agency of the
2 government, federal government if you were selected as a
3 juror in this case? And these are unpleasant experiences or
4 just views by you, members of your immediate family or very
5 close personal friends.

6 Anybody in the first row?

7 (No Response)

8 THE COURT: Second row?

9 (No Response)

10 THE COURT: Last rows?

11 (No Response)

12 THE COURT: I see no hands.

13 The particular agents in this case are from
14 Homeland Security, correct?

15 MS. ZACK: Yes, Your Honor.

16 THE COURT: Is there anybody in particular who is
17 themselves, members of your immediate family or very close
18 personal friends has had an encounter with or dispute with or
19 experience with the Department of Homeland Security that
20 would make it difficult for you to be fair or impartial in
21 this case if you were selected as a juror, anybody at all? I
22 see one hand.

23 PROSPECTIVE JUROR NO. 47: 47.

24 THE COURT: I'm sorry. What's your number?

25 PROSPECTIVE JUROR NO. 47: 47.

1 THE COURT: Thank you, sir.

2 Anybody else?

3 (No Response)

4 THE COURT: All right. Ladies and gentlemen, the
5 subject matter of this case. This case presents allegations
6 that the defendant, Mr. Jason Daniel Gandy, committed acts
7 that would cause or result in minors, individuals under the
8 age of 18, engaging in sexually explicit conduct. These are
9 only allegations; they're not evidence.

10 And as I said, this summary is an introduction
11 for the limited but important purpose to let you as jurors
12 see what the case is about and tell us if you have any
13 concerns about your ability to be fair and impartial in this
14 case.

15 We are not asking if you approve of any of the
16 acts that the allegations in the indictment describe. That's
17 not the issue. The issue is whether you can fairly and
18 impartially judge the evidence, apply the law and without
19 bias or prejudice or sympathy deliberate to a verdict based
20 on the evidence and the law. That's the issue. And at
21 trial, of course, it is the burden of the United States, the
22 prosecution, to prove every element of every allegation
23 beyond a reasonable doubt.

24 So here are the allegations, and they are only
25 allegations. Count 1 alleges that on or about July 19, 2012,

1 Mr. Gandy knowingly transported an individual I will refer to
2 as Minor Victim 1 from Texas to the United Kingdom with the
3 intent that the minor engage in prostitution and other
4 activity, sexual activity that could be the basis for a
5 criminal charge.

6 Count 2 alleges that on or between April 1 and
7 July 18, 2012, Mr. Gandy knowingly did or attempted to
8 persuade, induce, entice or coerce Minor Victim 1 to engage
9 in sexually explicit conduct in order to produce visual
10 depictions of it.

11 Count 2 alleges that Mr. Gandy produced the
12 visual depictions using materials mailed or transported in
13 interstate or foreign commerce and that he transmitted those
14 depictions using a means and facility of interstate or
15 foreign commerce.

16 Count 3 alleges that on or about July 19, 2012
17 Mr. Gandy knowingly transported child pornography using a
18 means or facility of interstate or foreign commerce.

19 Counts 4, 5, 6 and 7 allege that on or about
20 April 1 to July 19, 2012 as to Minor Victim 1, on or about
21 November 1 to December 27, 2005 as to Minor Victim 2, on or
22 about June 1 to August 31, 2005 as to Minor Victim 3 and on
23 or about August 1 to November 30, 2007 as to Minor Victim 4,
24 Mr. Gandy attempted to knowingly recruit, harbor, transport,
25 obtain, advertise, maintain, patronize and solicit by any

1 means Minor Victim 1, 2, 3 and 4, males who were at least 14
2 but under 18 years old.

3 Count 6 -- 4, 5, 6 and 7 allege that Mr. Gandy
4 did so knowing and in reckless disregard that Minor Victims
5 1, 2, 3 and 4 were not 18 years old and that they would be
6 caused to engage in a commercial sex act.

7 Counts 4, 5, 6 and 7 also allege that Mr. Gandy
8 attempted to benefit either financially or by receiving
9 anything of value from participating in a venture involving
10 Minor Victims 1, 2, 3 and 4.

11 Mr. Gandy has pleaded not guilty as to all of
12 the counts. You have heard no evidence. The case depends on
13 the government's ability to prove guilt, prove each of the
14 elements of each count beyond a reasonable doubt. You've
15 heard nothing along those lines.

16 But just based on what the case is about -- and
17 many of the cases that come into court involve issues that
18 none of us would prefer to think about. This is no
19 exception, but we need those cases tried -- is there anyone
20 on the panel who, merely because of the subject matter of the
21 allegations, does not believe or has a serious question about
22 your ability to be the kind of fair and impartial juror that
23 I described?

24 Anyone on the first row? I see a couple hands.

25 PROSPECTIVE JUROR NO. 11: 11.

1 THE COURT: 11. Thank you, sir.

2 PROSPECTIVE JUROR NO. 3: 3.

3 PROSPECTIVE JUROR NO. 1: 1.

4 THE COURT: Thank you.

5 PROSPECTIVE JUROR NO. 4: 4.

6 THE COURT: Thank you. 3, 1, 11, 4.

7 Anyone else on the first row?

8 PROSPECTIVE JUROR NO. 10: No. 10.

9 THE COURT: Thank you.

10 PROSPECTIVE JUROR NO. 8: No. 8.

11 THE COURT: 8. Thank you.

12 Anybody on the second row? Yes, ma'am.

13 PROSPECTIVE JUROR NO. 17: 17.

14 THE COURT: 17. Thank you.

15 PROSPECTIVE JUROR NO. 16: 16.

16 PROSPECTIVE JUROR NO. 19: 19.

17 THE COURT: Thank you.

18 PROSPECTIVE JUROR NO. 25: 25.

19 THE COURT: Thank you.

20 PROSPECTIVE JUROR NO. 27: 27.

21 THE COURT: Thank you.

22 Next row.

23 PROSPECTIVE JUROR NO. 34: 34.

24 THE COURT: Thank you, sir.

25 PROSPECTIVE JUROR NO. 35: 35.

1 PROSPECTIVE JUROR NO. 37: 37.

2 THE COURT: Thank you.

3 PROSPECTIVE JUROR NO. 44: 44.

4 THE COURT: Thank you.

5 Last rows. Yes, sir.

6 PROSPECTIVE JUROR NO. 48: 48.

7 THE COURT: Thank you.

8 PROSPECTIVE JUROR NO. 50: 50.

9 THE COURT: Thank you.

10 PROSPECTIVE JUROR NO. 52: 52.

11 THE COURT: Thank you.

12 PROSPECTIVE JUROR NO. 53: 53.

13 THE COURT: Thank you.

14 PROSPECTIVE JUROR NO. 54: 54.

15 THE COURT: Thank you.

16 PROSPECTIVE JUROR NO. 58: 58.

17 THE COURT: Thank you.

18 MR. BUCKLEY: Pardon me, Your Honor. We have one

19 more.

20 THE COURT: I'm sorry. I missed you. Thank you.

21 PROSPECTIVE JUROR NO. 64: No. 64.

22 THE COURT: 64 or 54?

23 PROSPECTIVE JUROR NO. 64. 64.

24 THE COURT: Thank you, ma'am.

25 Is there any member of the panel, either

1 yourselves or members of your immediate family or very close
2 personal friends, who as a minor ran away from home?

3 (No Response)

4 THE COURT: I see no hands.

5 Is there any member of the panel who yourselves
6 or any member of your immediate family or very close personal
7 friends spent any period as a child, again, under the age of
8 18, 18 or under, living on the street?

9 (No Response)

10 THE COURT: And you all know what that means, I
11 think?

12 (No Response)

13 THE COURT: I see no hands.

14 Is there any member of the panel who yourselves
15 or any member of your immediate family or your close personal
16 friends has had sexually explicit images or videos of them
17 taken when they were a minor, either with or without the
18 permission of the person who was being, whose images were
19 being filmed or recorded or taken? Anybody been filmed in a
20 sexually explicit way, yourselves, members of your
21 immediately family or very close personal friends?

22 I see one hand.

23 PROSPECTIVE JUROR NO. 53: 53.

24 THE COURT: Thank you.

25 I am going to expand on that question: Beyond

1 18 and under.

2 Is there anybody who has had, who, and let's
3 put the age limit at say 30, anybody who yourselves, members
4 of your immediate family or very close personal friends who
5 up to the age of 30 spent time living on the street?

6 (No Response)

7 THE COURT: Is there anybody who, when you or a
8 close family member or close personal friend were 30 or
9 younger, had pictures, movies, selfies, whatever, taken in
10 sexually explicit images?

11 (No Response)

12 THE COURT: I see no hands.

13 Some of the law that I will give you -- and I
14 am not giving you the law now -- are laws that make it
15 illegal to traffic in minors for commercial sex even if the
16 minor is a willing participant. Is there anybody on the
17 panel who would find it difficult to follow that law?

18 I see one hand.

19 PROSPECTIVE JUROR NO. 45: 45.

20 THE COURT: Thank you.

21 Anybody else?

22 (No Response)

23 THE COURT: And you may receive an instruction on
24 the law, you may -- I am not giving it to you now -- that the
25 government need not prove that the defendant had actual

1 knowledge that a particular victim was under the age of 18,
2 but that it is enough if the government proves beyond a
3 reasonable doubt that the defendant had a reasonable
4 opportunity to observe that person's age. Is there anyone
5 who would have difficulty applying that law?

6 (No Response)

7 THE COURT: I see no hands. Thank you.

8 A few other points. This case involves a
9 defendant who is a member of the gay community. There are
10 people who have very strong beliefs, that are offended by any
11 person who is not heterosexual and only heterosexual. I
12 don't care. Everyone is entitled to their beliefs. And I
13 don't care if it is a religious, a moral or other-based
14 belief. I just need to know if there is anyone who feels so
15 strongly about it that they would find it difficult not to
16 hold that fact against the defendant?

17 Anybody on the first row?

18 (No Response)

19 THE COURT: Second row?

20 (No Response)

21 THE COURT: Third row?

22 (No Response)

23 THE COURT: Last rows?

24 (No Response)

25 THE COURT: Thank you.

1 Is there anyone who believes that people, young
2 people -- and I am not talking about minors only. Of course,
3 from my vantage point, "young" covers a lot of territory --
4 is there anyone who feels that young people who are gay are
5 probably gay because they were at some point victimized?
6 Anybody who feels that way?

7 (No Response)

8 THE COURT: Is there any member of the panel who for
9 whatever reason believes that homosexual acts themselves
10 deserve punishment or that they should be criminalized and as
11 a result of those beliefs would find it difficult to apply
12 the law as I give it to you, which is not fact? Anybody on
13 the first row or any of the other rows?

14 (No Response)

15 THE COURT: I see no hands.

16 Lots of cases present to you a challenge for
17 the issue that crimes require proof of both a certain mental
18 state and action. But if you have just a thought, a desire
19 and you don't try to act out on it, you don't try or
20 accomplish an action based on that thought or desire, all you
21 have is what one of our former presidents described as
22 certain kinds of thought, desires. In our country we don't
23 prosecute people for what they're thinking; they got to do
24 something.

25 Is there anybody who would tend to convict a

1 defendant if there is evidence of certain thoughts or desires
2 that that individual had that you might find offensive, but
3 there were only thoughts and desires?

4 (No Response)

5 THE COURT: Would that make it difficult for you to
6 be a fair and impartial juror and apply rules that say you
7 can't be convicted for bad thoughts? Even if I don't like
8 those thoughts, even if I might not like the person thinking
9 them, that person, that doesn't make that person a criminal.

10 Is there anybody who has difficulty applying
11 that law?

12 (No Response)

13 THE COURT: I see no hands.

14 Is there anybody who, if there was that kind of
15 evidence, might tend to reduce the proof required to convict,
16 that is, convict even if you were convinced beyond a
17 reasonable doubt? Anybody think that that might affect them?

18 I see one hand.

19 PROSPECTIVE JUROR NO. 19: 19.

20 THE COURT: Thank you.

21 Anybody else?

22 (No Response)

23 THE COURT: Thank you.

24 So let me ask kind of a broad version of some
25 of these questions. What I am basically asking is that if

1 there are those among you who are morally offended by any
2 aspect of what you learn through the evidence of the
3 defendant's lifestyle, beliefs, what he said, what he
4 thought -- and I will give you instructions that say it
5 doesn't matter if you find them reprehensible or admirable,
6 that's not the issue. The issue is whether the prosecution
7 proved the elements of guilt. And I will describe to you
8 what the elements of each alleged offense are. I will give
9 you the law. Did the prosecution present evidence of guilt
10 beyond a reasonable doubt? That's the issue.

11 Is there any member of the panel who would find
12 it difficult to follow my instructions if they conflicted
13 with your own moral or religious beliefs about sexual
14 orientation or thoughts or words? Anybody think they would
15 have that difficulty?

16 (No Response)

17 THE COURT: I see no hands.

18 I'm going to read to you -- well, I am going to
19 ask one more general question first. I've asked questions
20 about friends or family members and your own past experience
21 in anything like the allegations in this case. I am going to
22 ask that broad a question.

23 Is there any member of the panel who yourselves
24 or who have had individuals who are members of your immediate
25 family or very close personal friends involved in any kind of

1 issue related to the issues that this case involves who
2 hasn't already raised their hand in response to earlier
3 questions?

4 (No Response)

5 THE COURT: Thank you. I see no hands.

6 All right. I am going to give you a list of
7 potential witnesses in the case, and I want you to tell me in
8 response if you believe you recognize any of the names or you
9 know any of these people. And if I mispronounce names,
10 somebody tell me if you can.

11 "Juanae."

12 MS. ZACK: It's "Juanae," Your Honor.

13 THE COURT: "Juanae." All right. Thank you.
14 Johnson. The Johnson I got. You've already met Agent
15 Johnson.

16 Another agent from Homeland Security, Jeff
17 "Chappell."

18 MS. ZACK: It's Chappell, Your Honor.

19 THE COURT: All right. I am two for two. Sorry.
20 Jeff Chappell.

21 Minor Victim 1, Minor Victim No. 2, Minor
22 Victim 3. You are not going to know those names.

23 Steve Reeves, who is with the United Kingdom
24 Border Agency.

25 Joan O'Donovan, also with United Kingdom Border

1 Agency.

2 Sonia Elizabeth Nolasco, Bert Diaz, Clarence
3 Thomas and Julie Gandy.

4 Does anybody believe they know any of those
5 individuals or recognize any of those names?

6 (No Response)

7 THE COURT: Is there any member of the panel who,
8 when you walked in today, recognized somebody else on the
9 panel who you already knew? And if anybody answers this
10 question, there ought to be two people who answer this
11 question. Anybody at all? Houston is one of the biggest
12 small towns I've ever encountered.

13 I'm sorry. You believe you recognize another
14 person?

15 PROSPECTIVE JUROR NO. 64: In this --

16 THE COURT: In this panel?

17 PROSPECTIVE JUROR NO. 64: Oh, I thought you were
18 saying within the jury.

19 THE COURT: No. Within this panel, the people
20 seated where you are.

21 PROSPECTIVE JUROR NO. 64: No, no.

22 THE COURT: Is there anybody on the panel who thinks
23 they know me?

24 (No Response)

25 THE COURT: I didn't recognize any of you either.

1 Is there any member of the panel who, even if
2 you have not worked in law enforcement, you have law
3 enforcement training?

4 (No Response)

5 THE COURT: I see no hands.

6 Is there any member of the panel who has done
7 any kind of work or had training with, involving individuals
8 who are charged with, have been identified as or who are
9 victims of sexual exploitation or abuse?

10 I see one hand.

11 PROSPECTIVE JUROR NO. 46: 46, Your Honor.

12 THE COURT: Thank you.

13 Anybody else?

14 (No Response)

15 THE COURT: Anybody who has members of your
16 immediate family or very close personal friends who are now
17 or have been involved in that kind of work?

18 (No Response)

19 THE COURT: I see no hands. Thank you.

20 Some of the allegations that you have heard
21 about in the summary I gave you -- and again, it's only a
22 summary of the issues -- you could tell from the dates that
23 they occurred sometime ago. It's not unusual for cases to
24 take a while to get to court for a variety of reasons; but
25 that is not something that, unless I instruct you on it to

1 the contrary, the time span involved does not and may not
2 influence your deliberations.

3 Is there anybody who would find it difficult to
4 apply that instruction? It doesn't matter how long ago it
5 occurred. I see one hand. Yes, ma'am.

6 PROSPECTIVE JUROR NO. 33: Can I ask a question?

7 THE COURT: No. You can do that when you want to
8 come up.

9 PROSPECTIVE JUROR NO. 33: Okay. 33, ma'am.

10 THE COURT: All right. Thank you.

11 Anybody else have any question about what
12 apparently was not as clear a question as I hoped?

13 (No Response)

14 THE COURT: Can you disregard the fact that these
15 events happened a long time ago, excepting so far as the
16 passage of time might bear on the witness's memory and
17 credibility that you may consider?

18 (No Response)

19 THE COURT: I see no hands. Thank you.

20 PROSPECTIVE JUROR NO. 45: 45.

21 THE COURT: 45. Thank you, sir.

22 Anybody else?

23 (No Response)

24 THE COURT: Is there anyone -- and here's a question
25 again I need you to listen carefully to -- who for any

1 physical reason or any other reason -- remember, I told you
2 this case would likely take a week or less to finish, a very
3 short case for cases tried in federal court. Is there
4 anyone, whether for physical, medical or other reasons would
5 find being in court today, Thursday, Friday, Monday, maybe
6 Tuesday, maybe Wednesday, maybe a -- and listen to the
7 words -- significant hardship, okay. I didn't say
8 inconvenient. I didn't say I'd rather not be here.
9 Significant hardship.

10 First row.

11 PROSPECTIVE JUROR NO. 10: No. 10.

12 THE COURT: 10. Thank you.

13 PROSPECTIVE JUROR NO. 3: 3.

14 THE COURT: Thank you.

15 PROSPECTIVE JUROR NO. 12: No. 12.

16 PROSPECTIVE JUROR NO. 14: No. 14.

17 THE COURT: Thank you.

18 Next row.

19 PROSPECTIVE JUROR NO. 28: 28.

20 THE COURT: 28.

21 PROSPECTIVE JUROR NO. 19: 19.

22 PROSPECTIVE JUROR NO. 55: 55.

23 THE COURT: 28, 19, 55.

24 Anyone else?

25 PROSPECTIVE JUROR NO. 54: 54.

1 THE COURT: Thank you.

2 PROSPECTIVE JUROR NO. 41: 41.

3 THE COURT: 41.

4 Anybody else.

5 PROSPECTIVE JUROR NO. 52: 52.

6 PROSPECTIVE JUROR NO. 62: 62.

7 THE COURT: Anybody else, significant hardship?

8 MS. ZACK: I apologize, Your Honor. Did 65 indicate
9 yes?

10 THE COURT: Not that I had noted, thank you, not on
11 that question.

12 All right. Thank you very much.

13 May I see counsel up here?

14 65? I'm sorry. I wrote you down as 55. All
15 right. I have got you. Thank you.

16 Come on up, please.

17 (Conference before the bench)

18 THE COURT: I have asked the general questions, I
19 have asked the boilerplate question and I've asked the
20 specific questions that both sides had submitted with the
21 exception of me, too questions that we talked about earlier,
22 and I indicated I was not going to ask.

23 What else do I need to ask at this point before
24 we bring them up for individual questioning?

25 MS. ZACK: Two things. This garnered a great deal

1 of media attention.

2 THE COURT: Fine.

3 MS. ZACK: And if Your Honor wants -- I don't see
4 any press in the courtroom. Everyone we recognize is our
5 interns or court interns -- I can read the names or you can
6 read the names of the minor victims because they're adults
7 now.

8 THE COURT: So what are their names?

9 MS. ZACK: It's Kevin Vasquez.

10 THE COURT: Vasquez?

11 MS. ZACK: Vasquez, David Villa Gomez, Karl Chris
12 Durrett.

13 THE COURT: Karl?

14 MS. ZACK: Chris Durrett. He goes by Chris Durrett.

15 THE COURT: D-u-r-r?

16 MS. ZACK: R-r, yeah, that's good enough.

17 And Jose Alfaro.

18 THE COURT: Okay.

19 MR. BUCKLEY: Nothing further from us, Your Honor.

20 MS. ZACK: Thank you, Your Honor.

21 (In open court)

22 THE COURT: Two more questions, ladies and
23 gentlemen.

24 Is there anybody who believes they heard
25 anything about this case or read anything about this case,

1 this particular case?

2 (No Response)

3 THE COURT: I see no hands.

4 There are stories in the paper that you may
5 have seen or newscasts that may involve accusations or events
6 similar in some way maybe, at least they sound that way, to
7 what I have described as the subject matter of the
8 allegations in this case. Would you be able to set those out
9 of your mind and not allow them to influence you in any way
10 as you limited your attention to the evidence you heard in
11 this courtroom? Anyone have difficulty doing that?

12 (No Response)

13 THE COURT: I see no hands.

14 And I need to give you a little bit more
15 information about the names of the alleged victims in this
16 case. We don't give names of minors to protect privacy, but
17 they are now all adults.

18 Kevin Vasquez, David Villa Gomez, Karl Chris
19 Durrett and Jose Alfaro.

20 Anybody believe that they know or recognize any
21 of these individuals?

22 (No Response)

23 THE COURT: I see no hands. Thank you.

24 All right. We are going to take a very brief
25 break, about 10 minutes. During that time, right before I

1 come back I want the first row, everybody who raised your
2 hand on the first row to line up in front of the jury box.
3 So you can use this opportunity to dash out and use the
4 restroom and come back in.

5 Those of you in the remaining rows, we are
6 going to get to you very fast. So if you, too, want to use
7 the restroom and then come back in and wait, that would be
8 the best thing. Take the seat you currently occupy until I
9 call on your row to line up in front of the jury box, and we
10 will have those of you who raised your hand up here one at a
11 time as I described earlier.

12 So we will resume in about 10 minutes. Thank
13 you.

14 (Recess taken)

15 THE COURT: Thank you. Row No. 1. Lawyers please
16 come up.

17 Come on up, please, sir. You are No. 14. All
18 right. Let me find where you raised your hand. If anybody
19 remembers, please jump in.

20 MR. BUCKLEY: I believe it's a hardship.

21 THE COURT: Was that the only time?

22 PROSPECTIVE JUROR NO. 14: Right.

23 THE COURT: And what is your problem, sir?

24 PROSPECTIVE JUROR NO. 14: Me and my family are
25 traveling to Colorado on Tuesday early morning. We have

1 scheduled with a friend to come with us, some of the--

2 THE COURT: Are you driving or are you flying?

3 PROSPECTIVE JUROR NO. 14: We are flying. We have
4 got the tickets.

5 THE COURT: All prepaid?

6 PROSPECTIVE JUROR NO. 14: All prepaid and some
7 nonrefundable.

8 THE COURT: I'm sorry?

9 PROSPECTIVE JUROR NO. 14: Some of the hotels are
10 nonrefundable, the car rental.

11 THE COURT: That's what I needed, okay. Very good.

12 Thank you for sharing that.

13 Is there anything else that the lawyers want to
14 ask?

15 MR. BUCKLEY: Nothing, Your Honor.

16 THE COURT: Sir, if you could just take the seat
17 that you currently occupy.

18 Next, please. No. 11. Let me find where you
19 raised your hand.

20 MR. BUCKLEY: It was an issue about fair and
21 impartial related to the subject matter.

22 PROSPECTIVE JUROR NO. 11: I don't remember the
23 exact question.

24 THE COURT: I do. And that was the question.

25 PROSPECTIVE JUROR NO. 11: The subject matter.

1 THE COURT: Go ahead, please.

2 PROSPECTIVE JUROR NO. 11: It was nearly 10 years
3 ago, a babysitter we used to use, some explicit venture got
4 out about her when she was 15 years old, then she committed
5 suicide later that year; and we lost her as a babysitter and
6 lost her as well. If some of that came up, I thought, that
7 came to my mind. I'm like, man, if --

8 THE COURT: Would that make it difficult for you to
9 set that out of your mind?

10 PROSPECTIVE JUROR NO. 11: It might. That's why I
11 said something.

12 THE COURT: And I appreciate that.

13 Any follow-ups?

14 MR. BUCKLEY: No follow-up on that, Your Honor.

15 MS. ZACK: No.

16 THE COURT: All right. Thank you, sir.

17 We will take challenges at the end of the
18 process.

19 MR. BUCKLEY: Yes, Judge.

20 THE COURT: Come on up, please, No. 2.

21 You had a personal interest in an outcome of a
22 criminal case or a family member did?

23 PROSPECTIVE JUROR NO. 2: Yes.

24 THE COURT: Tell me about that.

25 PROSPECTIVE JUROR NO. 2: My brother was convicted

1 of possession and distribution of drugs.

2 THE COURT: What were the drugs?

3 PROSPECTIVE JUROR NO. 2: Heroin.

4 THE COURT: State or federal court?

5 PROSPECTIVE JUROR NO. 2: It was state.

6 THE COURT: How long ago, if you remember?

7 PROSPECTIVE JUROR NO. 2: I don't really remember.

8 THE COURT: Is your brother -- was he sentenced to a
9 prison term?

10 PROSPECTIVE JUROR NO. 2: No. He's been to jail
11 twice. He was just put on probation.

12 THE COURT: Did you believe that he was treated
13 fairly?

14 PROSPECTIVE JUROR NO. 2: Yes.

15 THE COURT: Did you have any involvement in the
16 events leading up to that charge?

17 PROSPECTIVE JUROR NO. 2: No, ma'am.

18 THE COURT: Is there anything about that experience
19 within your family that would affect your judgment if you
20 were to be on this jury?

21 PROSPECTIVE JUROR NO. 2: No, ma'am.

22 I do feel like it's worth mentioning, though,
23 that I feel like I've seen this case before or something. It
24 looks very, very familiar to me. So I don't know if that's
25 worth mentioning.

1 THE COURT: It may be just a vague resemblance to
2 any case that involves these kinds of issues. Is that
3 possible?

4 PROSPECTIVE JUROR NO. 2: I feel I've seen this
5 particular -- specifically you. I feel like I have seen
6 pictures or --

7 THE COURT: Ms. Zack is involved in similar cases.
8 This is the area she practices.

9 PROSPECTIVE JUROR NO. 2: Okay. I don't know if
10 that's worth mentioning or not.

11 THE COURT: Is there anything about that that would
12 affect your judgment one way or the other?

13 PROSPECTIVE JUROR NO. 2: No.

14 THE COURT: Anything else?

15 MR. BUCKLEY: Nothing from us, Your Honor.

16 THE COURT: Thank you, sir. Take the seat you
17 currently occupy.

18 Juror No. 1. How are you, No. 1?

19 PROSPECTIVE JUROR NO. 1: Good. And you?

20 THE COURT: You have a friend or family member who
21 was involved in law enforcement?

22 PROSPECTIVE JUROR NO. 1: My past family best
23 friend.

24 THE COURT: And what kind of work did they do?

25 PROSPECTIVE JUROR NO. 1: One of them is a HPD

1 officer, and my best friend is with the Conroe police
2 department.

3 THE COURT: I'm sorry. Conroe police department?

4 PROSPECTIVE JUROR NO. 1: Yes.

5 THE COURT: Any of them involved in work similar to
6 the kind of things we have describe here?

7 PROSPECTIVE JUROR NO. 1: Not that I know of.

8 THE COURT: Is the fact that they are involved in
9 law enforcement, is that going to affect your judgment one
10 way or the other?

11 PROSPECTIVE JUROR NO. 1: No.

12 THE COURT: You also raised your hand with a concern
13 about being fair because of the subject matter.

14 PROSPECTIVE JUROR NO. 1: Yeah. I was exposed to
15 pornography when I was a kid, and so the thought of someone
16 doing that to a minor --

17 THE COURT: When you say "exposed to?"

18 PROSPECTIVE JUROR NO. 1: I was scrolling through
19 the channels once and it piqued my interest, and then I
20 stopped looking for a few years. The thought of someone
21 doing that to a child makes me very emotional.

22 THE COURT: Would that make it difficult for you to
23 be fair and impartial if you were selected as a juror in this
24 case?

25 PROSPECTIVE JUROR NO. 1: I want to say it wouldn't,

1 but I can't tell you with 100 percent confidence.

2 THE COURT: Would it make you lean in any particular
3 direction?

4 PROSPECTIVE JUROR NO. 1: It would probably lead me
5 to judge the person harshly just emotionally. I would try my
6 best not to, but I can't guarantee it.

7 THE COURT: So you might take it out on the
8 defendant in this case. Is that what you are saying?

9 PROSPECTIVE JUROR NO. 1: Yeah.

10 THE COURT: And having recognized that risk, can you
11 discipline your own thinking so that you would not be
12 affected by that kind of potential from bias or prejudice?

13 PROSPECTIVE JUROR NO. 1: Yes, ma'am. I am saying,
14 again, the emotion. It was the child's innocence that was
15 brought up.

16 THE COURT: And would you be able to put it out of
17 your mind and not allow it to affect your judgment one way or
18 the other?

19 PROSPECTIVE JUROR NO. 1: Yes.

20 THE COURT: You are confident that you could put it
21 out of your mind and not allow it to affect you?

22 PROSPECTIVE JUROR NO. 1: Not 100 percent confident.

23 THE COURT: All right. Thank you, sir. And I just
24 need an honest answer, and I appreciate you giving it.

25 Any questions, counsel?

1 MR. BUCKLEY: Nothing from us.

2 MS. ZACK: No, Your Honor.

3 THE COURT: All right.

4 Thank you, sir. Just take a seat.

5 Next, No. 3. Let me see why you raised your
6 hand.

7 First of all, you had a personal interest in
8 the outcome of a criminal case or a friend or family member
9 did?

10 PROSPECTIVE JUROR NO. 3: Which question was that?
11 I'm sorry?

12 THE COURT: Personal interest in the outcome of a
13 criminal case?

14 PROSPECTIVE JUROR NO. 3: Oh, my brother had a -- he
15 was charged with misdemeanor and bodily assault.

16 THE COURT: Did you think he was treated fairly?

17 PROSPECTIVE JUROR NO. 3: Yes.

18 THE COURT: Is there anything about that that would
19 affect your judgment if you were going to be on this jury?

20 PROSPECTIVE JUROR NO. 3: No.

21 THE COURT: You indicated a concern about being fair
22 and impartial just because of the subject matter.

23 PROSPECTIVE JUROR NO. 3: I have three small
24 children, nine, six and a two-year-old. So I know this case
25 would be beyond a reasonable doubt, and I think it would

1 probably for me be a reasonable doubt. I wouldn't be able to
2 because I have three small children, I think.

3 THE COURT: Lots of people have children.

4 PROSPECTIVE JUROR NO. 3: I know, but --

5 THE COURT: That's not disqualifying as a juror, but
6 I understand your concern.

7 Having identified that concern, we all care
8 about children.

9 PROSPECTIVE JUROR NO. 3: Uh-huh.

10 THE COURT: I have four daughters.

11 PROSPECTIVE JUROR NO. 3: Yeah, of course.

12 THE COURT: Having identified that concern --

13 PROSPECTIVE JUROR NO. 3: Uh-huh.

14 THE COURT: -- can you set it out of your mind and
15 not allow it to affect your judgment one way or the other?

16 PROSPECTIVE JUROR NO. 3: Perhaps.

17 THE COURT: And that would require you to say, I
18 would not want this person perhaps in the room with my child,
19 but that doesn't mean he's guilty of what he's alleged to
20 have done.

21 PROSPECTIVE JUROR NO. 3: Okay.

22 THE COURT: The government still has to prove guilt
23 beyond a reasonable doubt. Would you make the government do
24 that?

25 PROSPECTIVE JUROR NO. 3: Yes.

1 THE COURT: Would you be tempted -- let's assume
2 just for the purpose of this discussion that the prosecution
3 introduced some evidence of guilt but not beyond a reasonable
4 doubt, some evidence, though. Would you be tempted to say,
5 you know what, it's not beyond a reasonable doubt, but I
6 don't like this guy, and convict him. Would you reach to
7 convict him, in other words?

8 PROSPECTIVE JUROR NO. 3: Because I don't like the
9 person, no.

10 THE COURT: Or you in general think if there is any
11 risk at all, I want to protect all of the children in the
12 world?

13 PROSPECTIVE JUROR NO. 3: No. I wouldn't do that.

14 THE COURT: Would you listen to the Court's
15 instructions, here's what the government must prove in order
16 for the jury to return a unanimous verdict of guilty on this
17 particular --

18 PROSPECTIVE JUROR NO. 3: Right.

19 THE COURT: -- count, this particular count, this
20 particular count?

21 PROSPECTIVE JUROR NO. 3: Yes.

22 THE COURT: Would you listen carefully, and setting
23 aside your worries about your children in general --

24 PROSPECTIVE JUROR NO. 3: Uh-huh. I realize.

25 THE COURT: -- would you be able to say, you know,

1 the government just hasn't shown me enough?

2 PROSPECTIVE JUROR NO. 3: Yes.

3 THE COURT: All right.

4 Question?

5 MR. BUCKLEY: Yes, Your Honor.

6 Good morning. I can see that this discussion
7 is affecting you because I would imagine you have got these
8 feelings for your own children.

9 PROSPECTIVE JUROR NO. 3: Right.

10 MR. BUCKLEY: And it's understandable, I am not
11 criticizing; but I am wanting to ensure that if you sit on
12 the jury and if the evidence in this case had an emotional
13 effect on you that you can assure us a hundred percent that
14 you can follow the Court's instructions even if they cause
15 you emotional discomfort.

16 Are you able to tell us that at this point in
17 time, are you able to commit a hundred percent that your
18 emotional response, no matter how strong it may be, that you
19 can set that aside?

20 PROSPECTIVE JUROR NO. 3: It would be hard. I
21 wouldn't like it, but I would have to do it.

22 MR. BUCKLEY: Understood.

23 THE COURT: You also indicated a concerned about a
24 significant hardship.

25 PROSPECTIVE JUROR NO. 3: Yes. I know that the

1 trial can go all the way to Tuesday. Tuesday my kids, my
2 two-year-old has at-home care, and the babysitter has for
3 weeks set aside that. On Tuesday I will have my
4 two-year-old. I wouldn't be able to leave her with anyone.

5 THE COURT: That day would you be able to arrange
6 child care?

7 PROSPECTIVE JUROR NO. 3: I could try. I could try
8 and see, but I just -- I can try and figure out.

9 THE COURT: Okay. There are lots of people with
10 young children who have sort of child care swapping
11 arrangements made with friends and neighbors.

12 PROSPECTIVE JUROR NO. 3: Yeah, that could happen.
13 Yeah, I could see if I can work that out.

14 THE COURT: You might have a debt to pay to
15 somebody. You might have to take care of their kid one day.

16 PROSPECTIVE JUROR NO. 3: Oh, yeah.

17 THE COURT: That's pretty normal, isn't it?

18 PROSPECTIVE JUROR NO. 3: Yeah. I don't have a lot
19 of friends or family to take care of my kids. It's only that
20 one person. So I can probably -- I am off that day that she
21 took off work to take care of my child, so that's the only
22 day. So I can see. I can probably make it work.

23 THE COURT: And we appreciate that very much. Thank
24 you. Just take the seat you currently occupy.

25 PROSPECTIVE JUROR NO. 3: Sure.

1 THE COURT: Next, please. No. 8, how are you?

2 PROSPECTIVE JUROR NO. 8: I'm good.

3 THE COURT: Come on up. So let me find where you
4 raised your hand.

5 MR. BUCKLEY: Subject matter.

6 THE COURT: You indicated that you were concerned
7 about the subject matter and your ability to be fair.

8 PROSPECTIVE JUROR NO. 8: Uh-huh. Yes, ma'am.

9 THE COURT: You need to answer yes or no. The court
10 reporter has to take it down.

11 Tell me about your concerns.

12 PROSPECTIVE JUROR NO. 8: Just morally, I don't
13 believe, I don't feel like it's right.

14 THE COURT: What's "it," because the only allegation
15 in question is whether there is evidence of guilt beyond a
16 reasonable doubt?

17 PROSPECTIVE JUROR NO. 8: Just the whole. I'm
18 sorry.

19 THE COURT: That's okay.

20 PROSPECTIVE JUROR NO. 8: The underage sex and
21 everything like that.

22 THE COURT: Are you able to -- do you think that
23 that makes you lean against the defendant from the outset?

24 PROSPECTIVE JUROR NO. 8: Against, yes.

25 THE COURT: Would you be able to overcome that and

1 not allow it to affect your judgment and follow the Court's
2 instructions?

3 PROSPECTIVE JUROR NO. 8: Yes.

4 THE COURT: You would be able to set it aside?

5 PROSPECTIVE JUROR NO. 8: Yes.

6 THE COURT: Nobody likes the subject matter. That's
7 not the issue here. But what is the issue is whether your
8 dislike of it is so strong --

9 PROSPECTIVE JUROR NO. 8: Okay.

10 THE COURT: -- that you would not be able to set it
11 aside and reach a verdict based on the evidence and my
12 instructions, which say you cannot be influenced by bias.

13 PROSPECTIVE JUROR NO. 8: Okay.

14 THE COURT: By prejudice, by emotion, by sympathy.
15 Can you do that?

16 PROSPECTIVE JUROR NO. 8: Yes.

17 THE COURT: Okay. You understand how important that
18 is?

19 PROSPECTIVE JUROR NO. 8: Yes.

20 THE COURT: Let me ask you this. Let's assume for
21 the purpose of just this discussion that at the trial the
22 government presented proof, some proof of guilt but not proof
23 beyond a reasonable doubt. They fall short.

24 PROSPECTIVE JUROR NO. 8: Uh-huh.

25 THE COURT: Would you be able, nonetheless, to look

1 at the government -- would you be tempted to say, you know,
2 it wasn't proof beyond a reasonable doubt, but I don't like
3 this guy so much --

4 PROSPECTIVE JUROR NO. 8: Uh-huh.

5 THE COURT: -- that I'm going to convict him anyway?
6 Would you be able to refrain from doing that and instead look
7 at your fellow jurors and the prosecutors and say, you had
8 some guilt evidence, but you didn't show me beyond a
9 reasonable doubt, not guilty?

10 PROSPECTIVE JUROR NO. 8: Yes. I could refrain.

11 THE COURT: You could do you that?

12 PROSPECTIVE JUROR NO. 8: Yes.

13 THE COURT: You wouldn't be tempted to reach for a
14 verdict of guilty because of dislike of the allegations?

15 PROSPECTIVE JUROR NO. 8: No.

16 THE COURT: All right.

17 MR. BUCKLEY: If I may, Your Honor.

18 THE COURT: Of course.

19 MR. BUCKLEY: Good morning.

20 What if at trial you hear evidence that in your
21 view is so horrible that it should be against the law, but
22 when you hear the Court's instructions, as it turns out, it's
23 not against the law. Would your feelings about how horrible
24 something might be influence your willingness or your ability
25 to follow the Court's instructions if you feel that something

1 should be illegal but isn't. Could that affect it?

2 PROSPECTIVE JUROR NO. 8: No.

3 MR. BUCKLEY: Okay. So, in other words, that you
4 can ensure us here a hundred percent that even if you have
5 very intense personal feelings that upset you about this case
6 that you can follow the Court's instructions even if you
7 might not agree with them?

8 PROSPECTIVE JUROR NO. 8: Yes.

9 MR. BUCKLEY: Thank you. Nothing further from us.

10 THE COURT: Thank you very much.

11 Any other issues?

12 MS. ZACK: No.

13 THE COURT: Take the seat you currently occupy.

14 Thank you.

15 Next, please, No. 4. And thank you for being
16 here today.

17 PROSPECTIVE JUROR NO. 4: Thank you.

18 THE COURT: You raised your hand in response to the
19 questions about whether the subject matter itself presented
20 difficulty for your ability to be fair and impartial.

21 Can you go further?

22 PROSPECTIVE JUROR NO. 4: And the reason why I
23 raised my hand, because the things that happened to me when I
24 was younger, not per se what he's done, but --

25 THE COURT: He hadn't done anything. There is no

1 proof.

2 PROSPECTIVE JUROR NO. 4: What was said. I just
3 feel like I would be partial to being fair.

4 THE COURT: We want you to be fair.

5 PROSPECTIVE JUROR NO. 4: Okay, okay.

6 THE COURT: But that means that you have to start
7 out not favoring the other side and not opposed to either
8 side. You can't have a preconceived idea of how the case
9 ought to end up.

10 PROSPECTIVE JUROR NO. 4: Right.

11 THE COURT: Do you have one?

12 PROSPECTIVE JUROR NO. 4: No, I don't have.

13 THE COURT: I don't know what kind of past
14 experiences you are talking about, No. 4, and I don't mean to
15 get personal, but you are No. 4. Nobody is going to know who
16 you are.

17 PROSPECTIVE JUROR NO. 4: Okay.

18 THE COURT: Are you talking about yourself being
19 subject to sexual acts as a child?

20 PROSPECTIVE JUROR NO. 4: Yeah. I was raped when I
21 was younger, so...

22 THE COURT: Below 18?

23 PROSPECTIVE JUROR NO. 4: Uh-huh.

24 THE COURT: Okay. Would you be able to -- and I am
25 sure that left emotional and other kind of marks?

1 PROSPECTIVE JUROR NO. 4: Uh-huh.

2 THE COURT: I don't need to know what they are, but
3 I do need to know this. Has the effect been -- I see how old
4 you are.

5 PROSPECTIVE JUROR NO. 4: Right.

6 THE COURT: Has the effect been muted or diminished
7 enough by time --

8 PROSPECTIVE JUROR NO. 4: Yeah, it has.

9 THE COURT: -- so that you would not allow it to
10 affect you, you could prevent it from affecting you?

11 PROSPECTIVE JUROR NO. 4: I can prevent it, yes.

12 THE COURT: You can put it out of your mind.
13 Essentially you can forget it happened?

14 PROSPECTIVE JUROR NO. 4: Uh-huh.

15 THE COURT: And look only at what happened in this
16 case based on the evidence?

17 PROSPECTIVE JUROR NO. 4: Yes.

18 THE COURT: Let's assume from this discussion that
19 the prosecution produced some evidence of the defendant's
20 case but did not prove beyond a reasonable doubt that he did
21 what he is charged with doing. Would you be tempted
22 nonetheless to convict him, to return a verdict of guilty
23 because there was some evidence of his guilt?

24 PROSPECTIVE JUROR NO. 4: Not -- no.

25 THE COURT: Would you hold the government to the

1 burden of proof that I instruct you it has to meet in order
2 for any of the jurors, much less all of the jurors, to return
3 a verdict of guilty?

4 PROSPECTIVE JUROR NO. 4: No.

5 THE COURT: You would not have any difficulty doing
6 that?

7 PROSPECTIVE JUROR NO. 4: No.

8 THE COURT: All right.

9 Questions?

10 MR. BUCKLEY: Thank you, Your Honor.

11 Good morning.

12 PROSPECTIVE JUROR NO. 4: Good morning.

13 MR. BUCKLEY: I guess if I were to phrase the
14 question this way: If the evidence in this case led you to
15 conclude that the defendant, Mr. Gandy, should be punished
16 for something that's been in evidence, was proven by the
17 government, and yet when you hear the Court's instructions
18 you learn that it doesn't meet the legal definition, that
19 it's not actually against the law. If you were to have an
20 emotional response based on your own life experiences to what
21 you have heard in evidence, do you have any concern that that
22 might prevent you or interfere with your ability to follow
23 the Court's instructions even if you didn't agree with them?

24 PROSPECTIVE JUROR NO. 4: A little bit.

25 MR. BUCKLEY: And with that understanding,

1 understanding your own personal history and your own
2 experiences and understanding the type of evidence that one
3 might hear in a case like this, are you able to commit to all
4 of us with a hundred percent certainty that your own feelings
5 would not prevent you from following exactly what the Judge
6 instructed you to do?

7 PROSPECTIVE JUROR NO. 4: Yeah, I am.

8 MR. BUCKLEY: Are you absolutely sure?

9 PROSPECTIVE JUROR NO. 4: Yeah, I'm sure.

10 MR. BUCKLEY: Thank you, ma'am.

11 THE COURT: Questions?

12 MS. ZACK: Your Honor, if we have other questions or
13 concerns about anything on these juror's forms, is now the
14 time?

15 THE COURT: Yes, absolutely.

16 MS. ZACK: Ma'am, you indicated on your form that
17 you were charged with welfare fraud, but when the Judge asked
18 the question if you ever had --

19 PROSPECTIVE JUROR NO. 4: You know what? I didn't
20 really understand, so that's --

21 THE COURT: So tell us about that.

22 PROSPECTIVE JUROR NO. 4: I had gone so far in the
23 State of California, it seems like in '91, I went to court
24 and I end up getting probation, five-year probation; and I
25 had to do community service.

1 THE COURT: Is it a misdemeanor or a felony, do you
2 remember?

3 PROSPECTIVE JUROR NO. 4: It might have -- I don't
4 know.

5 THE COURT: Was it expunged from your record after
6 you did your community service? Did you still have a record
7 of a criminal conviction?

8 PROSPECTIVE JUROR NO. 4: I still had a record,
9 yeah.

10 THE COURT: Do you know was the conviction, was it a
11 potential jail sentences of more than a year?

12 PROSPECTIVE JUROR NO. 4: No. I didn't have to go
13 to jail.

14 THE COURT: I know you didn't, but could you have?

15 PROSPECTIVE JUROR NO. 4: Yeah.

16 THE COURT: For how long, do you know?

17 PROSPECTIVE JUROR NO. 4: I think five years.

18 THE COURT: Okay. As far as you know, that's still
19 a conviction that's on the books?

20 PROSPECTIVE JUROR NO. 4: As far as I know. I
21 mean --

22 THE COURT: How long ago was that?

23 PROSPECTIVE JUROR NO. 4: It's back in '91.

24 THE COURT: Thank you for letting us know.

25 Any follow-up?

1 MR. BUCKLEY: Nothing further.

2 THE COURT: Thank you.

3 Yes, by all means, any questions at all at this
4 point.

5 MS. ZACK: Okay. Thank you, Your Honor.

6 MR. BUCKLEY: Yes, Your Honor.

7 THE COURT: Next, please. And let's have Row No. 2,
8 those of you who raised your hands, line up.

9 No. 12, how are you, sir?

10 MR. BUCKLEY: Your Honor, the matter was hardship.

11 THE COURT: What is the issue?

12 PROSPECTIVE JUROR NO. 12: If I don't go to work --

13 THE COURT: I'm sorry. I'm sorry. I'm having
14 trouble hearing you.

15 PROSPECTIVE JUROR NO. 12: If I don't go to work,
16 somebody has to cover my work. I have to work, otherwise
17 somebody have to cover me.

18 THE COURT: That's okay. You work for?

19 PROSPECTIVE JUROR NO. 12: I am a physician.

20 THE COURT: You know what. Physicians take calls
21 for each other all the time.

22 PROSPECTIVE JUROR NO. 12: I know.

23 THE COURT: You go on vacation, right, right? You
24 get sick, right?

25 PROSPECTIVE JUROR NO. 12: Kind of.

1 THE COURT: Okay. So somebody takes a call for you;
2 is that it?

3 PROSPECTIVE JUROR NO. 12: Yeah.

4 THE COURT: Is that okay?

5 PROSPECTIVE JUROR NO. 12: Yeah.

6 THE COURT: Okay. You have people who take calls
7 for you, right?

8 PROSPECTIVE JUROR NO. 12: I have, yeah.

9 THE COURT: Okay. Does take care of your hardship
10 issue?

11 PROSPECTIVE JUROR NO. 12: Kind of.

12 THE COURT: Is there anything else?

13 PROSPECTIVE JUROR NO. 12: No.

14 THE COURT: Thank you, sir. Anything else that you
15 would ask?

16 MR. BUCKLEY: No.

17 MS. ZACK: No.

18 PROSPECTIVE JUROR NO. 12: May I be seated?

19 THE COURT: Back in your seat, sir. Thank you.

20 No. 9, please. How are you, sir?

21 PROSPECTIVE JUROR NO. 9: I'm okay.

22 THE COURT: You raised your hand in response to a
23 question about friends or family members who worked for
24 prosecutors?

25 PROSPECTIVE JUROR NO. 9: My cousin used to be a

1 supervisor for the deputy clerk office for the City of
2 Houston.

3 THE COURT: Is there anything about that that about
4 affect your judgment if you were to be on this jury?

5 PROSPECTIVE JUROR NO. 9: No.

6 THE COURT: Let me see what else you raised your
7 hand on.

8 PROSPECTIVE JUROR NO. 9: That's it.

9 THE COURT: Any questions, counsel?

10 MR. BUCKLEY: Nothing from us, Your Honor.

11 THE COURT: Thank you, sir. If you could just take
12 the seat you currently occupy, that would be great.

13 Next, No. 6. How are you?

14 PROSPECTIVE JUROR NO. 6: Good.

15 THE COURT: You had friends or family members who
16 worked in the prosecutors offices?

17 PROSPECTIVE JUROR NO. 6: Yeah. My father-in-law,
18 now-deceased, was a former prosecutor and state district
19 judge.

20 THE COURT: And what was the name?

21 PROSPECTIVE JUROR NO. 6: W.G. Woods.

22 THE COURT: Oh, of course, Dub.

23 PROSPECTIVE JUROR NO. 6: Yeah, Dub.

24 THE COURT: I tried a case before Dub years ago.

25 PROSPECTIVE JUROR NO. 6: We miss him.

1 THE COURT: I'm sure you do.

2 Is there anything about his work that would
3 affect your judgment if you were to be a juror on this case?

4 PROSPECTIVE JUROR NO. 6: No.

5 THE COURT: It is a small world.

6 PROSPECTIVE JUROR NO. 6: It is.

7 THE COURT: Was that the only time you raised your
8 hand?

9 PROSPECTIVE JUROR NO. 9: Yes.

10 THE COURT: Questions, counsel?

11 MR. BUCKLEY: Nothing from us, Your Honor.

12 MS. ZACK: Nothing from us.

13 THE COURT: Thank you.

14 That was a blast from the past.

15 Next, please. No. 10, how are you today?

16 PROSPECTIVE JUROR NO. 10: Okay.

17 THE COURT: Are you okay?

18 PROSPECTIVE JUROR NO. 10: Yeah. I am here.

19 THE COURT: You indicated that you or someone in
20 your family or close personal friend had done law
21 enforcement.

22 PROSPECTIVE JUROR NO. 10: Yes. They currently are,
23 yes.

24 THE COURT: And who is that?

25 PROSPECTIVE JUROR NO. 10: Owen Birdsell.

1 THE COURT: And what is his relationship to you?

2 PROSPECTIVE JUROR NO. 10: He's my cousin.

3 THE COURT: And where is he? Where does he work?

4 PROSPECTIVE JUROR NO. 10: The city -- the Houston
5 police department.

6 THE COURT: And what, is he a --

7 PROSPECTIVE JUROR NO. 10: Forensic. He is out
8 there on the scenes where the crime scenes are.

9 THE COURT: Is he involved in any cases that are
10 similar to the allegation in this case?

11 PROSPECTIVE JUROR NO. 10: Not that I know of.

12 THE COURT: Has he shared many of the details of his
13 work with you?

14 PROSPECTIVE JUROR NO. 10: Very little.

15 THE COURT: Is there anything about his work and the
16 fact that he is your cousin that would affect your judgment
17 if you were to be on the jury?

18 PROSPECTIVE JUROR NO. 10: No. But there was one
19 thing I didn't mention. I think when you asked the question,
20 I kind of missed it.

21 You asked -- I had a relative who had been
22 molesting; and I did, and it was a nephew. And, of course, I
23 happened to be her teacher.

24 THE COURT: So it was the nephew who allegedly did
25 the molesting?

1 PROSPECTIVE JUROR NO. 10: Absolutely. And then she
2 committed suicide.

3 THE COURT: Okay. And how old was this person that
4 was molested?

5 PROSPECTIVE JUROR NO. 10: She was in the ninth
6 grade when I taught her.

7 THE COURT: So she was a student of yours?

8 PROSPECTIVE JUROR NO. 10: Yeah. Actually happened
9 to be in my class.

10 THE COURT: How long ago was that?

11 PROSPECTIVE JUROR NO. 10: Oh, it's been a long time
12 ago because I have been a counselor, too. I have been a
13 counselor in marriage and family things because I have dealt
14 with some cases but not --

15 THE COURT: Anything involving something like this?

16 PROSPECTIVE JUROR NO. 10: You know, I want to tell
17 you maybe with the counseling, but, you know, it's always
18 passed on to someone else. We never really handled it.

19 THE COURT: All right.

20 PROSPECTIVE JUROR NO. 10: Okay.

21 THE COURT: So let's focus on the one that did occur
22 in your bailiwick.

23 PROSPECTIVE JUROR NO. 10: Sure, sure, sure.

24 THE COURT: Is this part of the reason why you
25 raised your hand?

1 PROSPECTIVE JUROR NO. 10: No, no. I have nerve
2 damage in my right foot.

3 THE COURT: I think you raised your hand and said
4 that this was the subject matter.

5 PROSPECTIVE JUROR NO. 10: Yeah. I will tell you
6 this. My first cousin was bisexual, and he ended up passing
7 away. There was a lot of domestic things going on with
8 violence, with nudity; and so he ended up with AIDS and
9 passed away, and so that stayed in my head. That's why I --
10 I may be talking too loud. He just recently passed away a
11 couple of years ago.

12 THE COURT: All right.

13 PROSPECTIVE JUROR NO. 10: And we were about the
14 same age.

15 THE COURT: Let's start with the student who
16 committed suicide. You told me it was a long time ago?

17 PROSPECTIVE JUROR NO. 10: It was.

18 THE COURT: And this was not -- teachers care about
19 their students.

20 PROSPECTIVE JUROR NO. 10: Yes. And then the
21 counselor -- I was a counselor for a long time, too.

22 THE COURT: The combination of these things, would
23 any of them, either in themselves or together, make it so
24 difficult -- affect your judgment or be likely to affect your
25 judgment that you would find it difficult to be the kind of

1 fair and impartial juror that I described?

2 PROSPECTIVE JUROR NO. 10: In all honesty --

3 THE COURT: Please.

4 PROSPECTIVE JUROR NO. 10: -- yes.

5 THE COURT: And would that be really hard for you to
6 set aside?

7 PROSPECTIVE JUROR NO. 10: I think so, yes.

8 THE COURT: And all I need is an honest answer.

9 PROSPECTIVE JUROR NO. 10: Yes.

10 THE COURT: Questions?

11 MR. BUCKLEY: Nothing from us, Your Honor.

12 MS. ZACK: No, Your Honor.

13 THE COURT: Thank you.

14 Next, please. No. 28, you raised your hand.

15 MR. BUCKLEY: Hardship, Your Honor.

16 THE COURT: Significant hardship?

17 PROSPECTIVE JUROR NO. 28: There's a funeral that I
18 plan on attending this morning.

19 THE COURT: I'm sorry. You're No. 28?

20 PROSPECTIVE JUROR NO. 28: Yes.

21 THE COURT: Last-minute revelations are tough to
22 adjust. So, we'll be done as soon as we can. I don't know
23 if the timing or how far away it is or how close this person
24 was to you. I would urge you to go visit the family this
25 evening.

1 PROSPECTIVE JUROR NO. 28: I don't have any problems
2 other than that.

3 THE COURT: I'm sorry?

4 PROSPECTIVE JUROR NO. 28: I said I don't have any
5 problems being here other than that.

6 THE COURT: And had you notified us in advance, we
7 would have rescheduled you.

8 PROSPECTIVE JUROR NO. 28: I was only notified last
9 night that I had to be here today.

10 THE COURT: It doesn't matter. Notify us in advance
11 next time that you have specific days within which you are
12 subject to being called and we will know you can't make it,
13 and we will try to adjust in advance; just can't do it after
14 the fact with any ease.

15 So if you can be patient right now, take your
16 seat, and we will get done as fast as we can and you will be
17 able to go visit with the family.

18 PROSPECTIVE JUROR NO. 28: Okay.

19 MS. ZACK: I have a question, Your Honor. You
20 indicated on your form that you had an unlawful carry charge.
21 Can you tell us anything about that?

22 PROSPECTIVE JUROR NO. 28: Yeah. It was probably, I
23 think, 18, 20 years ago.

24 THE COURT: Was it a felony or a misdemeanor?

25 PROSPECTIVE JUROR NO. 28: No, no, misdemeanor.

1 MS. ZACK: Anything about that, are you going to
2 hold that against the government or law enforcement in any
3 way?

4 PROSPECTIVE JUROR NO. 28: No, ma'am.

5 MS. ZACK: Okay.

6 THE COURT: Thank you, sir.

7 Good morning, No. 16. How are you?

8 PROSPECTIVE JUROR NO. 16: Morning.

9 THE COURT: You raised your hand indicating you had
10 a concern about your ability to be fair because of the
11 subject matter.

12 PROSPECTIVE JUROR NO. 16: Yes.

13 THE COURT: Tell me what was on your mind.

14 PROSPECTIVE JUROR NO. 16: When you started saying
15 up to four children --

16 THE COURT: But these are only allegations, you
17 understand?

18 PROSPECTIVE JUROR NO. 16: I understand. I just, I
19 don't know if I have any preconceived feelings that would
20 prevent me from or keep me from being objective. I don't
21 know. I am nervous about --

22 THE COURT: Nobody likes the subject area that this
23 case concerns, nobody. And I don't -- I am not asking you to
24 like it. The issue is not whether you can find it in your --
25 end up liking it or not.

1 PROSPECTIVE JUROR NO. 16: Right.

2 THE COURT: But the government doesn't matter.
3 That's not the issue.

4 PROSPECTIVE JUROR NO. 16: Right.

5 THE COURT: The issue is whether there is any
6 specific reason or general reason that you would be unable to
7 follow the Court's instructions. My instructions are this:
8 You cannot base your verdict and your judgment on bias, on
9 prejudice, on revulsion, on emotion or sympathy.

10 You must instead limit your consideration to
11 the evidence produced in this courtroom, not what you read in
12 the paper, not movies you've seen, not books, not TV, the
13 evidence in this courtroom and my instructions on what the
14 law is.

15 One of those instructions, besides, you can't
16 be affected by bias or sympathy or emotion, is the government
17 has the burden of proving guilt beyond a reasonable doubt.
18 You cannot help the government prove its case. You have to
19 be satisfied that before you can vote guilty on any count
20 that the government has proven guilt as to every element of
21 that count beyond a reasonable doubt. Can you do that?

22 PROSPECTIVE JUROR NO. 16: I think so.

23 But I have one other concern. I'm afraid I am
24 not going to -- my short-term memory is not that great.

25 THE COURT: You can take notes.

1 PROSPECTIVE JUROR NO. 16: Oh, you can?

2 THE COURT: Yes, ma'am.

3 PROSPECTIVE JUROR NO. 16: I am so afraid I am not
4 going to remember everything that everybody says.

5 THE COURT: You and I are not quite the same age but
6 pretty close. I write it down.

7 PROSPECTIVE JUROR NO. 16: Okay.

8 THE COURT: We take notes, okay?

9 PROSPECTIVE JUROR NO. 16: All right. Thank you.

10 THE COURT: We are allowed to take notes. And I
11 will give you instructions on the appropriate limits on using
12 those notes.

13 PROSPECTIVE JUROR NO. 16: Can you ask, if somebody
14 says something and you don't quite remember, can you ask, can
15 a juror ask questions?

16 THE COURT: You can tell me if you need something
17 repeated because you haven't heard it.

18 PROSPECTIVE JUROR NO. 16: Or I don't understand it
19 or I don't remember it?

20 THE COURT: Well, write it down.

21 PROSPECTIVE JUROR NO. 16: Okay, okay.

22 THE COURT: So take notes if you're concerned.

23 PROSPECTIVE JUROR NO. 16: Okay. All right. Thank
24 you.

25 THE COURT: Literally with those, are you able to

1 follow my instructions?

2 PROSPECTIVE JUROR NO. 16: I think so. I think so.

3 THE COURT: You understand how important it is?

4 PROSPECTIVE JUROR NO. 16: Yes, I do, I do.

5 THE COURT: Would you be tempted -- let's assume for
6 the purpose of discussion that there was some evidence of
7 guilt presented by the prosecution but not guilt beyond a
8 reasonable doubt. Would you be tempted to sort of reach for
9 a conviction because of the nature of the subject matter even
10 if you knew that the government had not proven guilt beyond a
11 reasonable doubt?

12 PROSPECTIVE JUROR NO. 16: Possibly.

13 THE COURT: Could you discipline yourself so you
14 wouldn't do that?

15 PROSPECTIVE JUROR NO. 16: I would try very hard to
16 be objective.

17 THE COURT: You would have to ask yourself, has the
18 government proven this, not by some evidence, but by evidence
19 beyond a reasonable doubt? And the standard is evidence that
20 would satisfy you in making a decision in the most important
21 of your own affairs.

22 PROSPECTIVE JUROR NO. 16: I think so. I'd like to
23 think so.

24 THE COURT: We don't give A's for effort, we really
25 don't, okay?

1 PROSPECTIVE JUROR NO. 16: Okay.

2 THE COURT: You have to spell the words right; you
3 got to give the right answers on the arithmetic, okay. The
4 fact that you tried really hard is not going to make it.

5 PROSPECTIVE JUROR NO. 16: Okay.

6 THE COURT: I am not asking if you can try. I'm
7 asking, are you confident that you will be able to do that,
8 recognizing how important it is?

9 PROSPECTIVE JUROR NO. 16: I'd like to think so.

10 THE COURT: I understand, but that's not the
11 standard. If you are not --

12 PROSPECTIVE JUROR NO. 16: I'm pretty sure. I am
13 pretty sure.

14 THE COURT: Are you confident?

15 PROSPECTIVE JUROR NO. 16: Almost.

16 THE COURT: Beyond a reasonable doubt?

17 PROSPECTIVE JUROR NO. 16: Oh, gosh.

18 THE COURT: Would you want you on this jury? If you
19 were the defendant, would you want you on this jury?

20 PROSPECTIVE JUROR NO. 16: Probably not. I'm sorry.

21 THE COURT: Any questions?

22 MS. ZACK: No, Your Honor.

23 MR. BUCKLEY: Nothing from us, Your Honor.

24 THE COURT: Thank you. Take the seat you currently
25 occupy.

1 Next, Juror No. 17, how are you, ma'am?

2 PROSPECTIVE JUROR NO. 17: Good. Thank you.

3 MR. BUCKLEY: The same issues, Your Honor.

4 THE COURT: You raised your hand in response to the
5 question is there anything about this subject matter that
6 raises a concern on your part. Tell me what was on your
7 mind.

8 PROSPECTIVE JUROR NO. 17: I just, the subject
9 matter made me feel kind of uncomfortable, and I'd really
10 like --

11 THE COURT: Nobody likes it. It makes us all feel
12 uncomfortable.

13 Would you be able to put that aside and not
14 allow it to affect your judgment?

15 PROSPECTIVE JUROR NO. 17: I think so.

16 THE COURT: Are you confident?

17 PROSPECTIVE JUROR NO. 17: No, I am not.

18 THE COURT: If you were the defendant, would you
19 want you to be on this jury?

20 PROSPECTIVE JUROR NO. 17: I'm not sure. I am not
21 very -- it takes me a while to weigh the pros and cons.

22 THE COURT: That's okay.

23 PROSPECTIVE JUROR NO. 17: I am not sure if I can
24 make decisions very fast.

25 THE COURT: You don't have to be fast. Nothing

1 about this process has to be fast.

2 I am not asking you if you can make a decision
3 quickly. I am asking you if in making that decision you
4 would do so based on my instructions. And my instructions
5 include -- listen to what they include. You cannot allow
6 yourself to be affected by bias, by emotion, by fear, by
7 prejudice or by sympathy, including sympathy for victims.
8 You cannot be influenced by that.

9 You can only base your verdict on my
10 instructions on what the law is and on the evidence you hear
11 in this courtroom, not what you fear might happen in the
12 future, not what you have read about, not what you have heard
13 about on the news, whatever, read in movies, I mean, seen in
14 movies, read in books, evidence and my instructions, not
15 sympathy, not emotion. Can you do that?

16 PROSPECTIVE JUROR NO. 17: Yes, I can.

17 THE COURT: And if you can do that, the defendant
18 would have no concern about having you on this jury; is that
19 correct?

20 PROSPECTIVE JUROR NO. 17: That's correct.

21 THE COURT: And neither would the government?

22 PROSPECTIVE JUROR NO. 17: (Indicating in the
23 affirmative).

24 THE COURT: Let's assume just for the purpose of
25 discussion that there was some evidence presented by the

1 prosecution of guilt but not beyond a reasonable doubt.
2 Would you be tempted to return a verdict of guilty because
3 there was some evidence, even if there was not evidence
4 beyond a reasonable doubt? And the standard is evidence that
5 would satisfy you in making the most important of your own
6 affairs. Think about the most important decisions you've had
7 to make, who to marry, house to buy, where to go to school,
8 what kind of job, the most important of your own affairs.
9 Would you make the government meet that standard?

10 PROSPECTIVE JUROR NO. 17: I think so.

11 THE COURT: Same question. Are you confident that
12 you would do that, because those would be my instructions on
13 the law?

14 PROSPECTIVE JUROR NO. 17: Yes, ma'am.

15 THE COURT: Question?

16 MR. BUCKLEY: Please, Your Honor.

17 Good morning, ma'am. I can see that even this
18 discussion is affecting you emotionally. And is that because
19 of your boys and your own family?

20 PROSPECTIVE JUROR NO. 17: Yes, sir.

21 THE COURT: That's okay.

22 PROSPECTIVE JUROR NO. 17: I'm sorry.

23 MR. BUCKLEY: And please understand none of us --

24 THE COURT: Don't be nervous because of us.

25 MR. BUCKLEY: Yeah.

1 But what I want to make sure and what we are
2 all here to make sure is that, of course, you don't know what
3 evidence is going to be presented in this case; but if you
4 hear evidence that produces a response that upsets you deeply
5 and makes you sick to your stomach and then may even make you
6 very angry, but you learn when you hear the Court's
7 instructions that it might not be against the law, maybe you
8 feel it should be and that the defendant should be punished
9 for what you have heard, are you still a hundred percent
10 confident, can you commit at a hundred percent to following
11 the Court's instructions even if it goes against every
12 emotion and opinion that you may be feeling at that time?

13 PROSPECTIVE JUROR NO. 17: Yes, sir.

14 THE COURT: And you can commit that to us?

15 PROSPECTIVE JUROR NO. 17: Yes.

16 THE COURT: Thank you very much.

17 MS. ZACK: Nothing.

18 THE COURT: Next, please. How are you, sir?

19 PROSPECTIVE JUROR NO. 18: Fine. Thank you.

20 THE COURT: No. 18?

21 PROSPECTIVE JUROR NO. 18, yes, ma'am.

22 THE COURT: You raised your hand that you had law
23 enforcement knowledge?

24 PROSPECTIVE JUROR NO. 18: I have a brother-in-law,
25 he's been out about three years now, but he was local in

1 county as a reserve deputy.

2 THE COURT: Is there anything about his work that
3 would affect your judgment if you were to be on this jury?

4 PROSPECTIVE JUROR NO. 18: No, Your Honor.

5 THE COURT: Was he involved in any cases similar to
6 the kind of case you've heard about here?

7 PROSPECTIVE JUROR NO. 18: No, Your Honor.

8 THE COURT: Any questions? I think that's the only
9 time you raised your hand.

10 PROSPECTIVE JUROR NO. 18: Yes, Your Honor.

11 MR. BUCKLEY: Good morning, sir.

12 PROSPECTIVE JUROR NO. 18: Good morning.

13 MR. BUCKLEY: Would your relationship with someone
14 in law enforcement cause you or lead you to -- say there is a
15 witness who testifies who is from law enforcement. Would you
16 be inclined to give that witness's testimony more weight
17 automatically just because he or she works with law
18 enforcement? Is there a possibility that you might feel that
19 way?

20 PROSPECTIVE JUROR NO. 18: I wouldn't think so. I
21 have never been put in the position, but I wouldn't think so.

22 MR. BUCKLEY: If the Court, if the Judge instructs
23 you that you must consider every witness's testimony equal,
24 equally and assess their credibility independently, no matter
25 whether they're law enforcement or not, are you able to

1 commit to us that you can follow that instruction?

2 PROSPECTIVE JUROR NO. 18: Yes.

3 MR. BUCKLEY: Thank you, sir. Nothing further from
4 us, Your Honor.

5 THE COURT: Anything from the government?

6 MS. ZACK: No, Your Honor.

7 PROSPECTIVE JUROR NO. 18: So I'm done?

8 THE COURT: You're done. Take the seat you
9 currently occupy.

10 Next, No. 19. Good morning.

11 PROSPECTIVE JUROR NO. 19: Hi.

12 THE COURT: You raised your hand in response to a
13 question about not being fair because of the subject matter.
14 Tell me more about that.

15 PROSPECTIVE JUROR NO. 19: I don't know. I guess
16 it's because I have kids of my own and I just worry about me
17 getting emotional or having some bias, even if I don't.

18 THE COURT: We all have biases. We all have kids.
19 Lots of us have kids.

20 PROSPECTIVE JUROR NO. 19: Yes.

21 THE COURT: The question is not whether we like the
22 subject area or whether we are free from fear for our
23 children. We never are free from fear for our children,
24 right?

25 PROSPECTIVE JUROR NO. 19: Right.

1 THE COURT: The question is instead whether you are
2 able to follow the Court's instructions. And what do my
3 instructions include? You cannot allow yourself to be
4 affected in reaching a judgment by bias, sympathy for
5 victims, revulsion, by fear or emotion. Instead you have to
6 limit yourself to the evidence you hear in this courtroom and
7 to my instructions on the law, not what you have read about
8 in headlines or seen in movies or heard about in newscasts.

9 And based on those two things you have to
10 follow the instructions on what the law is and decide if as
11 to every element, every count that the government alleges
12 they have presented evidence proving guilt beyond a
13 reasonable doubt. And beyond a reasonable doubt means
14 evidence that would satisfy you in making the most important
15 decisions on your own affairs, who to marry, where to live,
16 what kind of career.

17 You're obviously a disciplined person by virtue
18 of academic scholarship. Would you be able to apply that
19 discipline and follow my instructions in spite of any sort of
20 an emotional response to just the allegations, which is
21 pretty common? Could you do that?

22 PROSPECTIVE JUROR NO. 19: I think so.

23 THE COURT: It's important that you be able to. We
24 don't give A's for effort, sadly.

25 PROSPECTIVE JUROR NO. 19: Yeah. I mean, I think I

1 could do that. I would just -- I think, because I'm a
2 scientist, I realize that people have lots of biases and
3 maybe I would, too. I don't know.

4 THE COURT: And having recognized that --

5 PROSPECTIVE JUROR NO. 19: Yeah.

6 THE COURT: -- would you be able to set them aside
7 and not allow them to affect your judgment?

8 PROSPECTIVE JUROR NO. 19: Yeah.

9 THE COURT: Let's assume just for the purpose of
10 discussion that the prosecution presented some evidence of
11 the defendant's guilt but not evidence beyond a reasonable
12 doubt. Would you nonetheless want to convict the defendant
13 and return a verdict of guilty even though you knew it was
14 not evidence beyond a reasonable doubt?

15 PROSPECTIVE JUROR NO. 19: No.

16 THE COURT: Okay. Final question. Are you so
17 worried about your own ability to be objective and to follow
18 my instructions and to hold the government to their burden
19 that if you were the defendant you wouldn't want you on this
20 jury?

21 PROSPECTIVE JUROR NO. 19: No.

22 THE COURT: Okay. Questions?

23 MR. BUCKLEY: Briefly, Your Honor.

24 Hi. Good morning.

25 PROSPECTIVE JUROR NO. 19: Hi.

1 MR. BUCKLEY: Understanding, I think, what you have
2 explained, which is that you have some potential biases, you
3 have expressed some concern that you could struggle with
4 those depending on what the evidence is. I think what we are
5 asking is whether you can for certain -- I don't want to use
6 the word scientific certainty because I think that has a
7 meaning that I am probably mis-communicating it -- but are
8 you able to, with a hundred percent certainty, commit to all
9 of us that no matter how biased or upset that you may become
10 when you are hear the evidence, whatever it is and no matter
11 how you feel, that you can commit a hundred percent to
12 following the Court's instructions even if you passionately
13 disagree with them?

14 PROSPECTIVE JUROR NO. 19: Yes.

15 MR. BUCKLEY: You would do that?

16 PROSPECTIVE JUROR NO. 19: Yes.

17 MR. BUCKLEY: Thank you, ma'am. Nothing further.

18 PROSPECTIVE JUROR NO. 19: Thank you.

19 THE COURT: All right. That's all.

20 The other time you raised your hand it was
21 covered by I think a question we have already asked about
22 reducing the burden of proof.

23 MS. ZACK: No. She said she had family somehow
24 involved in criminal law.

25 THE COURT: Okay. Is that you?

1 PROSPECTIVE JUROR NO. 19: I have a friend who is
2 involved in immigration.

3 THE COURT: Is there anything about that that would
4 affect your judgment if you were to be on this jury?

5 PROSPECTIVE JUROR NO. 19: I don't think so, no.

6 I mean, the final was the hardship one. My
7 husband's just got called out of town for next week, and I
8 have a daughter who is seven and she will be in camp from
9 8:00 to 4:00, but we don't have family around, so --

10 THE COURT: But you live pretty close?

11 PROSPECTIVE JUROR NO. 19: Yeah.

12 THE COURT: Is there somebody who would be able to
13 take care of her for an hour or so if we had to go, if we
14 were still going?

15 PROSPECTIVE JUROR NO. 19: I mean, I could look, but
16 I --

17 THE COURT: Lots of people with young children make
18 sort of "I'll take care of yours this time, but you got to
19 take care of mine next time because that's our deal."

20 PROSPECTIVE JUROR NO. 19: Yeah.

21 THE COURT: Would you be able to put something like
22 that into work?

23 PROSPECTIVE JUROR NO. 19: I would do my best to
24 try.

25 THE COURT: All right. Thank you.

1 Do you think you'd be able to do it? A lot of
2 people at Rice have young children.

3 PROSPECTIVE JUROR NO. 19: Yeah. I could probably,
4 yeah, probably.

5 THE COURT: I appreciate that very much. Thank you.

6 MR. BUCKLEY: We have one more matter. I believe
7 this is related to the first discussion that we had.

8 If I recall, you expressed concern that if
9 there was evidence that the defendant had certain thoughts or
10 desires that you found offensive or even repulsive that could
11 affect your ability to be fair in this case. How do you feel
12 about that in light of the discussion that we had?

13 PROSPECTIVE JUROR NO. 19: I think what I was
14 thinking was this. If someone had thought about it, there is
15 evidence someone thought about committing a crime, that I
16 would have trouble putting that aside as not being evidence.

17 THE COURT: It's evidence, but the point is that
18 it's not a crime.

19 PROSPECTIVE JUROR NO. 19: It's not a crime. I
20 agree with that.

21 THE COURT: And if that's the only evidence, then
22 the government has not proven the elements of the offense.

23 PROSPECTIVE JUROR NO. 19: Okay.

24 THE COURT: Would you be able to follow that
25 instruction?

1 PROSPECTIVE JUROR NO. 19: Yes.

2 THE COURT: All right.

3 MR. BUCKLEY: Thank you, ma'am.

4 PROSPECTIVE JUROR NO. 19: I have one more thing. I
5 think nobody said that they were morally against
6 homosexuality in the room, but I overheard a juror who said
7 he was. Do you want his number or --

8 THE COURT: Do you have the number?

9 PROSPECTIVE JUROR NO. 19: 34.

10 MR. BUCKLEY: Thank you very much.

11 THE COURT: Please take your seat.

12 Next, please.

13 No. 20, how are you?

14 PROSPECTIVE JUROR NO. 20: Good.

15 THE COURT: You had a question.

16 PROSPECTIVE JUROR NO. 20: Question of a criminal
17 case.

18 THE COURT: You a personal interest in?

19 PROSPECTIVE JUROR NO. 20: My son has been
20 charged -- my son has been charged with a felony, evading
21 arrest with a vehicle because he didn't pull over when the
22 cop tried to stop him for a traffic ticket, my 19-year-old
23 son.

24 THE COURT: Is that a pending charge?

25 PROSPECTIVE JUROR NO. 20: It's pending. He doesn't

1 have a court date. It's in Grimes County. There is no court
2 date.

3 THE COURT: State court?

4 PROSPECTIVE JUROR NO. 20: I don't know. It's in
5 Grimes county.

6 THE COURT: Is there anything about what he is
7 looking at that would affect your judgment if you were to be
8 on the jury in this case?

9 PROSPECTIVE JUROR NO. 20: No.

10 THE COURT: So far do you think he has been treated
11 fairly?

12 PROSPECTIVE JUROR NO. 20: Oh, yeah.

13 THE COURT: I think that was the only time you
14 raised your hand.

15 PROSPECTIVE JUROR NO. 20: That is.

16 THE COURT: Thank you so much.

17 Questions.

18 MR. BUCKLEY: Nothing from us, Your Honor.

19 THE COURT: Just take your seat, please ma'am.
20 Thank you.

21 Next, please. No. 21.

22 MR. BUCKLEY: Negative experience with law
23 enforcement.

24 PROSPECTIVE JUROR NO. 21: My husband's best friend,
25 Ray Hill --

1 THE COURT: I'm sorry. Say that again.

2 PROSPECTIVE JUROR NO. 21: My husband's best friend
3 is Ray Hill, and he is like a hero in Houston, so I know that
4 he had many charges in the police department when he was
5 arrested for a couple hours, but he won.

6 After that they tell him that -- and also he
7 had another case from the state court. He went to federal,
8 and actually they have to change it. This is what I know.
9 But he, like I don't know, he had just negative experience as
10 well; but again, because he knows and he is very good writing
11 speech, so he had a, like he won.

12 THE COURT: Is this a criminal case or a civil case?

13 PROSPECTIVE JUROR NO. 21: It was a -- he's
14 homosexual, so this is on this case. I don't know the
15 judges --

16 THE COURT: Where was that?

17 PROSPECTIVE JUROR NO. 21: In Houston.

18 THE COURT: He was arrested?

19 PROSPECTIVE JUROR NO. 21: Yeah, he was arrested.

20 THE COURT: By the state, by the Houston police
21 department?

22 PROSPECTIVE JUROR NO. 21: This is one case was
23 here. He had like many cases.

24 THE COURT: What was he arrested for?

25 PROSPECTIVE JUROR NO. 21: I don't know details.

1 This is all I know.

2 THE COURT: Any idea what he was arrested for?

3 PROSPECTIVE JUROR NO. 21: You can Google it right
4 here and you can see it.

5 THE COURT: No, actually we can't, not that easily.

6 PROSPECTIVE JUROR NO. 21: Okay.

7 THE COURT: How long ago was it?

8 PROSPECTIVE JUROR NO. 21: Huh?

9 THE COURT: How long ago was it?

10 PROSPECTIVE JUROR NO. 21: It was many years ago.

11 THE COURT: How many years ago?

12 PROSPECTIVE JUROR NO. 21: Maybe 10, 15 years ago.

13 THE COURT: Were you married then?

14 PROSPECTIVE JUROR NO. 21: He was our minister at
15 our wedding 10 years ago.

16 THE COURT: This is not your husband?

17 PROSPECTIVE JUROR NO. 21: No, no, no.

18 THE COURT: This is your minister?

19 PROSPECTIVE JUROR NO. 21: Yeah. My husband, he
20 is -- this is what I know and this is experience.

21 THE COURT: And you know it because your husband has
22 told you about it or your minister has told you about it?

23 PROSPECTIVE JUROR NO. 21: No, no, because he's my
24 friend as well, so then he told me.

25 THE COURT: But you don't know what he was charged

1 with?

2 PROSPECTIVE JUROR NO. 21: I don't know details

3 because --

4 THE COURT: Did it have anything to do with his
5 being homosexual?

6 PROSPECTIVE JUROR NO. 21: Yeah, it does.

7 THE COURT: How do you know that?

8 PROSPECTIVE JUROR NO. 21: Whatever he was charged
9 for.

10 THE COURT: But you don't know what he was charged
11 for?

12 PROSPECTIVE JUROR NO. 21: This is all details that
13 I don't know.

14 THE COURT: So you don't know if that had anything
15 to do with it one way or the other?

16 PROSPECTIVE JUROR NO. 21: I don't know details.

17 THE COURT: Were you aware of these events when they
18 were occurring? Were you aware of -- how long before you
19 knew this minister did all this happen?

20 PROSPECTIVE JUROR NO. 21: But it was before, you
21 know, when they --

22 THE COURT: Before you met him?

23 PROSPECTIVE JUROR NO. 21: Yes, yes. It was not
24 during that 10 years that I know him, yes, yes.

25 THE COURT: Before that?

1 PROSPECTIVE JUROR NO. 21: Yes, before that, yes.

2 THE COURT: And you don't know any of the details?

3 PROSPECTIVE JUROR NO. 21: No, not like --

4 THE COURT: So, because you don't know anything
5 about the specifics --

6 PROSPECTIVE JUROR NO. 21: Just only mine I know,
7 but it's case by case.

8 THE COURT: Right. And that's my point. Is there
9 anything about --

10 PROSPECTIVE JUROR NO. 21: This is on evidence and
11 this is --

12 THE COURT: And is there anything about what
13 happened to your minister before you met him that would in
14 any way affect your judgment if you were to be a juror in
15 this case?

16 PROSPECTIVE JUROR NO. 21: No, no at all, not at
17 all.

18 THE COURT: It wouldn't have any impact at all?

19 PROSPECTIVE JUROR NO. 21: No, because I know --

20 THE COURT: Could you set it out of your mind and
21 not allow yourself even to think about it?

22 PROSPECTIVE JUROR NO. 21: Oh, yes, yes.

23 THE COURT: Okay. Now I understand.

24 All right. Hang on. Let me make sure you
25 didn't raise your hand in response to any other question.

1 MR. BUCKLEY: Just one more matter, Your Honor.

2 THE COURT: Yes, sir.

3 MR. BUCKLEY: Good morning, ma'am. I can hear by
4 your accent that English may not be your first language?

5 PROSPECTIVE JUROR NO. 21: No, no.

6 MR. BUCKLEY: What is your first language?

7 PROSPECTIVE JUROR NO 21: Russian.

8 THE COURT: Russian, I assume.

9 PROSPECTIVE JUROR NO. 21: Yes.

10 MR. BUCKLEY: Thank you.

11 Do you have -- how long have you been speaking
12 English?

13 PROSPECTIVE JUROR NO. 21: 10 years.

14 MR. BUCKLEY: Do you have any --

15 THE COURT: Your English is very good.

16 MR. BUCKLEY: It is very good.

17 PROSPECTIVE JUROR NO. 21: Well, thank you.

18 MR. BUCKLEY: Do you have any concern about your
19 ability to understand the testimony or statements of people
20 in English?

21 PROSPECTIVE JUROR NO. 21: Just in case if I could
22 not understand, I can ask and they can rephrase it.

23 THE COURT: Yes.

24 PROSPECTIVE JUROR NO. 21: Just I want to make sure
25 that I understood it right.

1 THE COURT: We would be open to any indication by a
2 member of the jury that they haven't heard or understood.

3 PROSPECTIVE JUROR NO. 21: Because it's very
4 sensitive, and if it's something wrong, you are wrong, right?
5 Yeah, absolutely.

6 MR. BUCKLEY: Thank you, ma'am.

7 THE COURT: Thank you.

8 PROSPECTIVE JUROR NO. 21: Thank you.

9 THE COURT: Come on up, please, next.

10 And we will have to take a break for lunch
11 because I have a preexisting commitment, so you all will have
12 an opportunity to get something to eat.

13 No. 23.

14 PROSPECTIVE JUROR NO. 23: Good morning.

15 THE COURT: Tell me.

16 PROSPECTIVE JUROR NO. 23: I guess it's a question
17 about knowing somebody in law enforcement. I have a good
18 friend who's a U.S. Marshal and another one who's a
19 constable.

20 THE COURT: And are either of them involved in any
21 cases similar to what you've heard about today?

22 PROSPECTIVE JUROR NO. 23: I know for sure the
23 constable is not. I don't even know what my U.S. Marshal
24 friend does.

25 THE COURT: What about the other one?

1 PROSPECTIVE JUROR NO. 23: The constable, I don't
2 know. He wouldn't be. He does, you know --

3 THE COURT: Is there anything about the work that
4 they do and the relationship to you that would affect your
5 judgment one way or the other if you were on this jury?

6 PROSPECTIVE JUROR NO. 23: No, ma'am.

7 THE COURT: Was that the only time you raised your
8 hand?

9 PROSPECTIVE JUROR NO. 23: There's another issue.
10 I don't think -- I did raise my hand, but I don't think it
11 would affect my judgment in this case. I was arrested -- it
12 was a case of mistaken identity -- four years ago.

13 THE COURT: You were?

14 PROSPECTIVE JUROR NO. 23: Yes. Somebody with my
15 same name spelled a little bit differently wrote a bad check
16 in Dalhart, and the yahoo clerks in Dalhart put my
17 information in. So I was not --

18 THE COURT: Yahoo was not a compliment, right?

19 PROSPECTIVE JUROR NO. 23: No, it's not, ma'am, not
20 at all. You're from Texas, right, and you know that word?

21 THE COURT: Yes. I know that word.

22 PROSPECTIVE JUROR NO. 23: But I was arrested, just
23 a traffic violation and spent the night -- or not the night,
24 spent the day in Fort Bend County jail. And I spent a lot of
25 almost, a thousand dollars to get my name, get my record

1 expunged.

2 THE COURT: Was it identity theft or identify
3 confusion?

4 PROSPECTIVE JUROR NO. 23: No. It was confusion,
5 total confusion. And I have the document that still covers
6 the mistaken identity.

7 THE COURT: That happened in Grimes County, right?

8 PROSPECTIVE JUROR NO. 23: No. It was Dallam
9 County.

10 THE COURT: Dallam, fine. It doesn't matter. It
11 doesn't involve anything, any of the people who were involved
12 here?

13 PROSPECTIVE JUROR NO. 23: No. I'm just pissed at
14 the courts because I can't --

15 THE COURT: Oh, you are pissed at those poor people?

16 PROSPECTIVE JUROR NO. 23: Those people, the yahoos.

17 THE COURT: My question is, can you limit your
18 "pissoffedness" to that?

19 PROSPECTIVE JUROR NO. 23: I can't. If there's a
20 defense of mistaken identity, I might have an issue.

21 THE COURT: No. It's not an issue in this case.

22 PROSPECTIVE JUROR NO. 23: Then y'all would have to
23 really prove --

24 THE COURT: That's not an issue in the case.

25 PROSPECTIVE JUROR NO. 23: Okay.

1 THE COURT: So with that clarification, would
2 anything you have just described affect your judgment if you
3 were a juror in this case?

4 PROSPECTIVE JUROR NO. 23: No, ma'am.

5 THE COURT: All right. And I'm sorry for what
6 happened to you just as one citizen to another.

7 PROSPECTIVE JUROR NO. 23: Thank you.

8 MS. ZACK: You are not going to hold it against us?

9 PROSPECTIVE JUROR NO. 23: No, no, no, no, no.

10 THE COURT: All right.

11 PROSPECTIVE JUROR NO. 23: Not unless you are from
12 Dalhart, Texas.

13 THE COURT: Or yahoos.

14 PROSPECTIVE JUROR NO. 23: Yeah.

15 THE COURT: Anything else?

16 MR. BUCKLEY: Nothing from us.

17 MS. ZACK: No.

18 THE COURT: Thank you. Take your seat you currently
19 occupy.

20 Next, please. No. 24, how are you this
21 morning?

22 PROSPECTIVE JUROR NO. 25: 25, ma'am.

23 THE COURT: 25. I am looking for where you raised
24 your hand.

25 You know somebody in the U.S. attorney's

1 office?

2 PROSPECTIVE JUROR NO. 25: Well, this regards Mr.
3 Patrick. I got to know him quite well during the 2016
4 judicial campaign when he was running for the bench. My
5 husband was running simultaneous and we campaigned together
6 quite frequently.

7 I also know, very close friends with two of the
8 other district criminal court judges, Denise Bradley and
9 Renee Magee. I've known Renee since high school.

10 THE COURT: Is there anything about your friendship
11 with them and the work they do that would cause you to --

12 PROSPECTIVE JUROR NO. 25: No. I would certainly do
13 my best to be fair. I just wanted to make sure this was
14 disclosed.

15 THE COURT: That's lovely music, but if you can shut
16 it down, that would be helpful. Thank you.

17 PROSPECTIVE JUROR NO. 25: More serious, to just
18 kind of save you time, one of the things that I wanted to
19 make sure was disclosed is that I have been the host of a
20 symposium through my church of faith-based human trafficking
21 groups in the Houston area.

22 THE COURT: You know, a lot of people are worried
23 about the policies, and we all care. That's not the issue.

24 The issue is, in this particular case, if you
25 are on the jury, can you follow my instructions and not be

1 affected by your general compassion or passion, not be
2 affected by emotion, by bias?

3 PROSPECTIVE JUROR NO. 25: Absolutely.

4 THE COURT: Can you set aside those emotions, any
5 emotion and limit your consideration to the evidence in the
6 case and my instructions on the law?

7 PROSPECTIVE JUROR NO. 25: Yes.

8 THE COURT: And my instructions will say, you, a
9 juror, cannot return a verdict of guilty, even if the
10 government presents some evidence of guilt --

11 PROSPECTIVE JUROR NO. 25: Yes.

12 THE COURT: -- unless they prove every element of
13 every count beyond a reasonable doubt.

14 PROSPECTIVE JUROR NO. 25: Absolutely.

15 THE COURT: That standard is enough evidence to
16 satisfy you in making a decision in the most important of
17 your own affairs.

18 PROSPECTIVE JUROR NO. 25: Yes.

19 THE COURT: Would you be able to follow that
20 instruction?

21 PROSPECTIVE JUROR NO. 25: Absolutely, yes, Your
22 Honor.

23 THE COURT: Questions?

24 MS. ZACK: I do.

25 Based on the questionnaire before you, you are

1 an attorney?

2 PROSPECTIVE JUROR NO. 25: Yes.

3 THE COURT: Have you ever practiced criminal law?

4 PROSPECTIVE JUROR NO. 25: Not if I could help it.

5 MS. ZACK: Okay. Are you going to hold it against
6 us that we do?

7 PROSPECTIVE JUROR NO. 25: No.

8 MS. ZACK: What does your husband do?

9 PROSPECTIVE JUROR NO. 25: He is a civil litigator
10 and primarily focuses his practice in insurance coverage.

11 MS. ZACK: Yeah.

12 THE COURT: I have a related question. You went to
13 law school how long ago?

14 PROSPECTIVE JUROR NO. 25: I graduated in 1986.

15 THE COURT: Okay, very helpful.

16 Have you had a long enough time since law
17 school to forget what you once knew about the rules of
18 evidence?

19 PROSPECTIVE JUROR NO. 25: No, because I still
20 actively practice, but it's a little bit different for
21 criminal law.

22 THE COURT: That is my point.

23 PROSPECTIVE JUROR NO. 25: And, yes, anything in
24 criminal law is foreign territory. If it doesn't have to do
25 with breaking and entering at night or something common law,

1 yeah.

2 THE COURT: A related question, though. When we get
3 someone who has specialized knowledge on the jury, you get a
4 little -- we get worried, frankly, that there's going to be a
5 secret expert witness in the jury room. Wildly unfair. But
6 with lawyers I get concerned that I am going to have somebody
7 in there saying, let me tell you what you didn't hear because
8 the rules of evidence kept it away. You can't tell that.
9 And you can't allow it to affect your own thinking. Can you
10 live up to those rules?

11 PROSPECTIVE JUROR NO. 25: Yes, ma'am.

12 THE COURT: Okay. I may make evidentiary rulings
13 that you don't agree with. Could you live by my rulings?

14 PROSPECTIVE JUROR NO. 25: I couldn't imagine that
15 happening.

16 THE COURT: I can easily. Would you just ignore it?

17 PROSPECTIVE JUROR NO. 25: Yes.

18 MR. BUCKLEY: Nothing from us, Your Honor.

19 MS. ZACK: Thank you so much, ma'am.

20 THE COURT: Please come forward. This is No. 27.
21 How are you?

22 You raised your hand in response to a question
23 about whether just the subject matter itself raised a concern
24 about your ability to be fair. Tell me what was on your
25 mind, please.

1 PROSPECTIVE JUROR NO. 27: I just felt something was
2 unsettling after hearing about the case.

3 THE COURT: The subject matter is unsettling.
4 Everybody feels that way.

5 PROSPECTIVE JUROR NO. 27: I feel as though the
6 defendant wouldn't be here if there weren't multiple victims
7 involved and -- well, he wouldn't be here.

8 THE COURT: Have you already, at least to that
9 extent, decided that he is guilty?

10 PROSPECTIVE JUROR NO. 27: I can't say for sure
11 because I have never been in this position to make that kind
12 of decision before, so I wouldn't be able to give you a
13 definitive answer on that.

14 THE COURT: As part of my instructions going into
15 the case and again at the end, you cannot begin the case with
16 a preconceived idea or leaning to how the case ought to end.
17 You have to wait until you have heard all the evidence.

18 PROSPECTIVE JUROR NO. 27: I understand.

19 THE COURT: You heard my instructions on the law,
20 and then you have to apply the evidence and the law.

21 PROSPECTIVE JUROR NO. 27: Uh-huh.

22 THE COURT: And satisfy yourself that the government
23 has proven guilt beyond a reasonable doubt.

24 You cannot allow yourself to be influenced by
25 emotion, by sympathy, by bias or by prejudice. Can you do

1 that, even given the subject matter?

2 PROSPECTIVE JUROR NO. 27: That's hard to tell.

3 THE COURT: Are you confident that you could do
4 that, follow my instructions?

5 PROSPECTIVE JUROR NO. 27: Not a hundred percent
6 confident, no.

7 THE COURT: All right. If you were the defendant in
8 this case, would you be worried about you being on this jury?

9 PROSPECTIVE JUROR NO. 27: Oh, no.

10 THE COURT: Any questions?

11 MR. BUCKLEY: Nothing from us.

12 MS. ZACK: No, Your Honor.

13 THE COURT: Thank you.

14 Next. No. 31, how are you, sir?

15 PROSPECTIVE JUROR NO. 31: Doing well. How about
16 yourself?

17 THE COURT: Doing fine. Thank you.

18 So you raised your hand in response to a couple
19 of questions.

20 MS. ZACK: Can't treat law enforcement officers the
21 same.

22 THE COURT: I'm sorry. Say that again.

23 MS. ZACK: Can't treat law enforcement officers the
24 same.

25 THE COURT: Oh, yes, the testimony of law

1 enforcement. You would have a problem treating them the way
2 you treated other witnesses?

3 PROSPECTIVE JUROR NO. 31: I would tend to be more
4 partial to them.

5 THE COURT: More partial?

6 Now, if you could consider the fact someone is
7 a law enforcement agent, but you can't consider it as kind of
8 a blanket enhancer of credibility.

9 PROSPECTIVE JUROR NO. 31: Correct.

10 THE COURT: Do you agree that all law enforcement
11 officers are individuals?

12 PROSPECTIVE JUROR NO. 31: Yes.

13 THE COURT: Some of them are good people, truth
14 tellers and some may not be. Do you agree with that?

15 PROSPECTIVE JUROR NO. 31: Uh-huh.

16 THE COURT: Is that a yes?

17 PROSPECTIVE JUROR NO. 31: Yes, ma'am.

18 THE COURT: You can consider the type of work
19 someone does, the kind of training they have in assessing
20 credibility, but only after you have heard all of the
21 evidence and judged them as an individual.

22 PROSPECTIVE JUROR NO. 31: Correct.

23 THE COURT: Not before you open your mouth, I think
24 you're credible. Could you do that?

25 PROSPECTIVE JUROR NO. 31: I would consider the

1 evidence, yes.

2 THE COURT: Could you treat witnesses, including law
3 enforcement agents, the way I've described and make
4 individual judgments based on the testimony they give and not
5 do it before the fact?

6 PROSPECTIVE JUROR NO. 31: Yes, ma'am.

7 THE COURT: And could you do that the same way for
8 law enforcement as for other types of witnesses?

9 PROSPECTIVE JUROR NO. 31: I could do that.

10 THE COURT: You understand how important it is?

11 PROSPECTIVE JUROR NO. 31: Yes, ma'am.

12 THE COURT: That's part of the instructions the
13 Court would give you. Can you follow the Court's
14 instructions? Would you follow the instructions?

15 PROSPECTIVE JUROR NO. 31: I would follow the
16 instructions, yes.

17 THE COURT: You may think the instruction ought to
18 be we should give law enforcement officers a presumption of
19 credibility, but we don't.

20 Could you follow my instruction even if you
21 didn't like it?

22 PROSPECTIVE JUROR NO. 31: Yes. I could follow it.

23 THE COURT: And you would?

24 PROSPECTIVE JUROR NO. 31: Yes, ma'am.

25 THE COURT: Any questions?

1 MR. BUCKLEY: Nothing from us. Thank you, sir.

2 MS. ZACK: Nothing from us.

3 THE COURT: Take your seat please, sir.

4 Next. Hi, how are you?

5 PROSPECTIVE JUROR NO. 32: I am well. Thank you.

6 THE COURT: You're No. 32?

7 PROSPECTIVE JUROR NO. 32: Yes, ma'am.

8 THE COURT: You raised your hand. The subject
9 matter was that you thought that because the defendant had
10 been indicted that was some evidence of guilt.

11 PROSPECTIVE JUROR NO. 32: So, you said it
12 perfectly. If there's smoke, there's fire.

13 I will say, I am totally open minded; but any
14 time I hear about anything like this is just where I go
15 first, so...

16 THE COURT: It may be your first reaction; but if I
17 tell you that's not law, the law is an indictment is not
18 smoke.

19 PROSPECTIVE JUROR NO. 32: Right.

20 THE COURT: It's no evidence of fire.

21 PROSPECTIVE JUROR NO. 32: Right.

22 THE COURT: Would you be able to follow that
23 instruction?

24 PROSPECTIVE JUROR NO. 32: Yes, ma'am.

25 THE COURT: Would you be able to set aside your

1 initial inclination of thinking, well, if he hadn't done
2 something wrong, he wouldn't be here? Could you set that
3 aside?

4 PROSPECTIVE JUROR NO. 32: Yes, ma'am.

5 THE COURT: And put the government in the position
6 of having to prove to you beyond a reasonable doubt. And
7 that standard means evidence that would satisfy you in making
8 the most important decisions in your own affairs.

9 PROSPECTIVE JUROR NO. 32: Yes, ma'am.

10 THE COURT: Getting married. That's a pretty high
11 standard.

12 PROSPECTIVE JUROR NO. 32: Yeah. No, I --

13 THE COURT: Would you hold the government to that
14 burden?

15 PROSPECTIVE JUROR NO. 32: Yes. If it does make
16 sense, yes. You have to remove the emotion out of it.

17 THE COURT: Absolutely.

18 PROSPECTIVE JUROR NO. 32: Yes, yes, ma'am.

19 THE COURT: All right. And would you be able to do
20 that?

21 PROSPECTIVE JUROR NO. 32: Yes, ma'am.

22 THE COURT: All right.

23 Any questions?

24 MR. BUCKLEY: Nothing from us.

25 THE COURT: As a good accountant --

1 PROSPECTIVE JUROR NO. 32: Yes.

2 THE COURT: -- you don't allow yourself to be -- you
3 may feel sorry for someone because their books are a mess,
4 but you don't apply a different accounting standard, do you?

5 PROSPECTIVE JUROR NO. 32: It's black and white.
6 It is what it is; that's right.

7 So, we're all done?

8 THE COURT: Any questions?

9 MS. ZACK: No questions.

10 THE COURT: Thank you, sir. Please take your seat.
11 Just take the seat you currently occupy.

12 Next, please. No. 33.

13 PROSPECTIVE JUROR NO. 33: Yes.

14 THE COURT: Let me find where you raised your hand.
15 You have friends or family members in law enforcement?

16 PROSPECTIVE JUROR NO. 33: As well as myself.

17 THE COURT: And what kind of work?

18 PROSPECTIVE JUROR NO. 33: Correction.

19 THE COURT: Where was that and how long ago?

20 PROSPECTIVE JUROR NO. 33: North Carolina and the
21 State of Georgia, last served in 2014.

22 THE COURT: What was your specific work?

23 PROSPECTIVE JUROR NO. 33: Officer, Sergeant.

24 THE COURT: In a penal, a prison?

25 PROSPECTIVE JUROR NO. 33: Yes, oh, yes,

1 correctional institution.

2 THE COURT: Was there anything about that work that
3 would affect your judgment if you were to be on this jury?

4 PROSPECTIVE JUROR NO. 33: Not at all.

5 THE COURT: Did you deal with inmates who had been
6 convicted of offenses similar to what you have heard
7 described?

8 PROSPECTIVE JUROR NO. 33: Absolutely.

9 THE COURT: Is there anything -- and I assume you
10 were mixed in with a bunch of other kinds of inmates?

11 PROSPECTIVE JUROR NO. 33: Absolutely.

12 THE COURT: And is there anything about that
13 exposure, if you will, that involvement that would affect
14 your judgment one way or the other?

15 PROSPECTIVE JUROR NO. 33: None at all.

16 THE COURT: Questions.

17 MR. BUCKLEY: Your Honor, I believe that the lady
18 mentioned that she had a question.

19 THE COURT: That's right. You did.

20 PROSPECTIVE JUROR NO. 33: That would have been
21 toward the end. You can disregard that.

22 THE COURT: It was clarified for you?

23 PROSPECTIVE JUROR NO. 33: It was irrelevant.

24 THE COURT: Okay. I think that was the only time
25 you raised your hand. Thank you.

1 PROSPECTIVE JUROR NO. 33: Yes. Thank you very
2 much.

3 MR. BUCKLEY: Thank you, ma'am.

4 THE COURT: Next, please. No. 34, how are you, sir?

5 PROSPECTIVE JUROR NO. 34: Excuse me?

6 THE COURT: How are you?

7 PROSPECTIVE JUROR NO. 34: I'm doing fine, ma'am.
8 And you, Your Honor?

9 THE COURT: "Ma'am" is fine. I don't care. Just
10 don't call me "honey."

11 PROSPECTIVE JUROR NO. 34: No thanks.

12 THE COURT: All right. You raised your hand in
13 response to the question about whether you would have
14 difficulty being fair because of the subject matter. Tell me
15 about that.

16 PROSPECTIVE JUROR NO. 34: Yes, ma'am. I don't know
17 really how to say this, but I have a real problem with child
18 molesters, whether they're accused or whether they've
19 actually done it, and I probably have a hard time with a
20 dislike. I just don't -- I will be honest with you. I don't
21 have much sympathy for them.

22 THE COURT: Let me ask you this, sir. If you were
23 the defendant or his lawyer, would you be scared of having
24 you on this jury?

25 PROSPECTIVE JUROR NO. 34: Me, yes, ma'am, I would.

1 THE COURT: Any questions?

2 MR. BUCKLEY: Nothing from us, Your Honor.

3 THE COURT: Thank you, sir.

4 Take your seat, please, sir.

5 Next, please. How are you, No. 35?

6 PROSPECTIVE JUROR NO. 35: Good.

7 THE COURT: You raised your hand on this question
8 about whether you could be fair. You have a concern about
9 being fair in response to the subject matter. Would you
10 explain a little bit more about that.

11 PROSPECTIVE JUROR NO. 35: Well, I just feel in the
12 beginning you mentioned all the allegations. My heart sank
13 and my stomach knotted up.

14 THE COURT: Nobody likes the subject area.

15 PROSPECTIVE JUROR NO. 35: Yeah. So I think, yes.

16 THE COURT: Is your emotional reaction so
17 significant that it would prevent you from being able to
18 follow the Court's instructions? And the Court's
19 instructions include that you cannot be influenced by
20 sympathy, anger, fear, bias or prejudice?

21 PROSPECTIVE JUROR NO. 35: Yeah, I mean --

22 THE COURT: Could you set those aside and not allow
23 them to --

24 PROSPECTIVE JUROR NO. 35: Just look at the facts?

25 THE COURT: Just looks at the facts, the evidence?

1 PROSPECTIVE JUROR NO. 35: Yeah.

2 THE COURT: Could you do that?

3 PROSPECTIVE JUROR NO. 35: Yeah, yeah, I think so.

4 THE COURT: Are you confident?

5 PROSPECTIVE JUROR NO. 35: Yeah.

6 THE COURT: The instructions I will give you and
7 every members of the jury would be, you have to decide this
8 case based on the evidence in this courtroom.

9 PROSPECTIVE JUROR NO. 35: Sure.

10 THE COURT: Not on what you read in the paper, not
11 on the headlines, not on what you hear on the news or read in
12 books or watch in movies.

13 PROSPECTIVE JUROR NO. 35: Sure.

14 THE COURT: The evidence in this courtroom about
15 these people, these events.

16 PROSPECTIVE JUROR NO. 35: Sure.

17 THE COURT: And my instructions on the law. You may
18 not agree with the instructions, but you would have to follow
19 them.

20 PROSPECTIVE JUROR NO. 35: Uh-huh.

21 THE COURT: Can you do that?

22 PROSPECTIVE JUROR NO. 35: Yeah.

23 THE COURT: Those instructions would include, the
24 government must prove, before I can return a verdict of
25 guilty on any count, evidence that proves beyond a reasonable

1 doubt that the defendant is guilty of every element of every
2 count alleged.

3 PROSPECTIVE JUROR NO. 35: Okay.

4 THE COURT: Could you do that?

5 PROSPECTIVE JUROR NO. 35: Yes.

6 THE COURT: Let's assume for the purpose of
7 discussion that you hear and see some evidence of guilt but
8 not evidence beyond a reasonable doubt. You remember that
9 standard is evidence that would satisfy you in making a
10 decision in the most important of your own affairs, who to
11 marry, where to go to school, where to live, the job you want
12 to take, that kind of decision.

13 PROSPECTIVE JUROR NO. 35: Uh-huh.

14 THE COURT: Would you be tempted, just because there
15 was some evidence of guilt, but not beyond a reasonable
16 doubt, to return a verdict of guilty even though there was
17 not evidence beyond a reasonable doubt?

18 PROSPECTIVE JUROR NO. 35: No. I am trying to just
19 process the question.

20 THE COURT: Sure. So this is some evidence of guilt
21 but not beyond a reasonable doubt.

22 PROSPECTIVE JUROR NO. 35: Right.

23 THE COURT: Government falls short.

24 PROSPECTIVE JUROR NO. 35: Right.

25 THE COURT: Would you sort of reach to find the

1 defendant guilty even if there was not evidence beyond a
2 reasonable doubt?

3 PROSPECTIVE JUROR NO. 35: No.

4 THE COURT: Because of the subject matter?

5 PROSPECTIVE JUROR NO. 35: Right.

6 THE COURT: And your own bias?

7 PROSPECTIVE JUROR NO. 35: I know it would be hard
8 to say no, but no like -- does that make sense?

9 THE COURT: Nobody says it's easy.

10 PROSPECTIVE JUROR NO. 35: Yeah.

11 THE COURT: Making a decision in the most important
12 of your own affairs is not easy, is it?

13 PROSPECTIVE JUROR NO. 35: Right, right.

14 THE COURT: Would you be able to do it?

15 PROSPECTIVE JUROR NO. 35: I can do it.

16 THE COURT: And would you do it?

17 PROSPECTIVE JUROR NO. 35: Yes.

18 THE COURT: Because it is so important.

19 PROSPECTIVE JUROR NO. 35: Correct, yeah.

20 THE COURT: We don't give A's for effort. You can't
21 merely say I'm gonna try. You have to be able to do it.

22 PROSPECTIVE JUROR NO. 35: Yes, ma'am.

23 THE COURT: You understand how important that is?

24 PROSPECTIVE JUROR NO. 35: I do.

25 THE COURT: Questions?

1 MR. BUCKLEY: Thank you, Your Honor.

2 Good afternoon. I guess it's afternoon now.

3 THE COURT: Almost. Yeah, it is now.

4 MR. BUCKLEY: Are you certain that you can follow
5 the Court's instructions as you have discussed with the Judge
6 even if something about the evidence makes you personally
7 angry or even disgusted? Even under those circumstances, are
8 you absolutely certain that you can follow the Judge's
9 instructions even if you don't like them?

10 PROSPECTIVE JUROR NO. 35: Yeah.

11 MR. BUCKLEY: Okay. Thank you very much.

12 THE COURT: Okay.

13 MS. ZACK: You indicated on the jury questionnaire
14 that you had made a complaint of an aggravated assault. Were
15 you a victim or a witness?

16 PROSPECTIVE JUROR NO. 35: No, it was -- what's it
17 called? It was road rage. It was a car.

18 MS. ZACK: Not a domestic issue?

19 PROSPECTIVE JUROR NO. 35: No.

20 MS. ZACK: Your husband works for the sheriff's
21 office?

22 PROSPECTIVE JUROR NO. 35: Yes.

23 MS. ZACK: At crime scenes?

24 PROSPECTIVE JUROR NO. 35: Yes, ma'am.

25 MS. ZACK: If you didn't think that Ms. Leo and I

1 proved this case, would you have trouble going back to your
2 husband and saying I found this guy not guilty?

3 PROSPECTIVE JUROR NO. 35: No.

4 MS. ZACK: Okay.

5 THE COURT: Does your husband do any work similar to
6 the work here?

7 PROSPECTIVE JUROR NO. 35: No.

8 THE COURT: Is there anything about his work and his
9 relationship to you that would affect your judgment to be on
10 this jury?

11 PROSPECTIVE JUROR NO. 35: No.

12 THE COURT: Any other questions?

13 MR. BUCKLEY: Thank you, Your Honor.

14 And understanding that your husband works in
15 law enforcement, you may hear in this case testimony from
16 other members of law enforcement.

17 PROSPECTIVE JUROR NO. 35: Correct.

18 MR. BUCKLEY: And the Judge is going to give you
19 instructions about how to weigh the credibility of each
20 witness, and those instructions are going to apply equally to
21 each witness.

22 PROSPECTIVE JUROR NO. 35: Sure.

23 MR. BUCKLEY: Do you have any concern about that you
24 might have a tendency to give more weight or more credibility
25 right away to the testimony of someone from law enforcement?

1 PROSPECTIVE JUROR NO. 35: I mean, there's good
2 apples and bad apples in every profession. So just because
3 they wear a badge doesn't mean they're --

4 MR. BUCKLEY: Understood.

5 So what I hear you saying is that you will
6 evaluate each witness?

7 PROSPECTIVE JUROR NO. 35: Uh-huh.

8 MR. BUCKLEY: In the way that the Judge instructs
9 you to do?

10 PROSPECTIVE JUROR NO. 35: Yes.

11 MR. BUCKLEY: No matter whether they're from law
12 enforcement or not?

13 PROSPECTIVE JUROR NO. 35: Correct.

14 MR. BUCKLEY: Thank you, ma'am.

15 THE COURT: Please take the seat you currently
16 occupy.

17 We are going to break for lunch now.

18 (In open court)

19 THE COURT: Ladies and gentlemen, I am going to give
20 you an opportunity to get your lunch. It will be quick. We
21 are going to take an hour. There is a cafeteria in the
22 basement. Don't talk about anything related to this case
23 with each other or anybody else.

24 There is also, if you cross the street and go
25 into the tunnel system, there is delis, there is Treebeards,

1 there's soup, sandwiches, cookies, ice cream. I don't know
2 what you're having for lunch, but you may feel you've earned
3 some ice cream, I don't know.

4 But be back here in the seat you currently
5 occupy. Those people who are standing up, remember who you
6 are and come back in; and when I come in, take those same
7 positions and we will start off right with you, and we'll
8 move as quickly as we can.

9 Thank you very much. See you in one hour.
10 Yes, 1:20. Lawyers, come back at 1:15.

11

12 (Recess taken for lunch)

13

14 THE COURT: Counsel, come on up. We will resume
15 where we left off. Please come forward.

16 No. 37. All right. You raised your hand
17 earlier in response to a question. Does the fact that the
18 defendant has been indicted, is that enough to kind of where
19 there's smoke, there's fire for you to already start thinking
20 that he might be guilty, that he is guilty?

21 PROSPECTIVE JUROR NO. 37: I think it kind of does,
22 but --

23 THE COURT: Sometimes we think that. But if I give
24 you an instruction that says an indictment is no smoke, it's
25 not evidence of anything, and I told you that during the --

1 in the instructions that I give all the jurors I say that the
2 fact of an indictment, the fact that a defendant is in court
3 is no evidence of guilt at all, and you can't take it that
4 way.

5 PROSPECTIVE JUROR NO. 37: Okay.

6 THE COURT: There has been no evidence, and you
7 cannot start the trial tending to believe that the defendant
8 is guilty.

9 PROSPECTIVE JUROR NO. 37: Uh-huh.

10 THE COURT: You have to have an open mind. Can you
11 do that?

12 PROSPECTIVE JUROR NO. 37: Yeah. I think I can do
13 that.

14 THE COURT: Can you set aside your initial reaction
15 and not allow it to affect your judgment in any way?

16 PROSPECTIVE JUROR NO. 37: Yeah.

17 THE COURT: And if I instruct you at the trial that
18 you have to keep an open mind throughout and that at the end
19 of the case you have to make a decision not based on initial
20 feelings, not based on bias or sympathy or prejudice but
21 based just on the evidence you heard in court and my
22 instructions on the law, and one of those instructions would
23 be the government has to prove guilt, if it can, beyond a
24 reasonable doubt, could you apply those rules?

25 PROSPECTIVE JUROR NO. 37: I think I could.

1 THE COURT: We don't give A's for effort.

2 You also raised your hand in response to the
3 question do you have concerns about your ability to be fair
4 just because of the subject matter.

5 PROSPECTIVE JUROR NO. 37: Uh-huh.

6 THE COURT: Tell me why you raised your hand on that
7 one.

8 PROSPECTIVE JUROR NO. 37: Just because of the fact
9 that it involves children.

10 THE COURT: We all agree about our children. And
11 the fact that they grow up and become adults doesn't mean you
12 quit worrying.

13 PROSPECTIVE JUROR NO. 37: Uh-huh.

14 THE COURT: But that sort generalized concern,
15 nobody likes the subject matter.

16 PROSPECTIVE JUROR NO. 37: Right.

17 THE COURT: That's not the issue. The issue is
18 whether you can be the kind of juror that I described, start
19 out on a level playing field. The burden's on the
20 government; defense doesn't have to prove anything.

21 PROSPECTIVE JUROR NO. 37: Uh-huh.

22 THE COURT: The defendant is innocent until and
23 unless the government proves guilt beyond a reasonable doubt.
24 And that standard is evidence that would convince you if you
25 were making a personal decision on the most important of your

1 own affairs. It's a high standard. It's not beyond all
2 possible doubt, but it's a high standard.

3 Would you be able to look at the government and
4 say, you didn't make that, you didn't convince me beyond a
5 reasonable doubt. Even if there is some evidence of guilt,
6 it wasn't enough, and I am voting not guilty because that's
7 what the Judge's instruction require. Could you do that? I
8 just need an honest answer.

9 PROSPECTIVE JUROR NO. 37: Yeah.

10 THE COURT: You could, or you would? Both have to
11 be true.

12 PROSPECTIVE JUROR NO. 37: Yeah. I could and I
13 would.

14 THE COURT: You understand how important that is?

15 PROSPECTIVE JUROR NO. 37: Yeah.

16 THE COURT: It's not just A for effort. You have to
17 be able to look at Mr. Buckley and say, you represent the
18 defendant and you don't need to be scared of having me on
19 this jury.

20 PROSPECTIVE JUROR NO: 37: Uh-huh.

21 THE COURT: I am going to listen to the evidence and
22 follow the Judge's instructions.

23 PROSPECTIVE JUROR NO. 37: Uh-huh.

24 THE COURT: Could you do that?

25 PROSPECTIVE JUROR NO. 37: Yes, I could do that. I

1 would do it.

2 THE COURT: You can make that commitment to Mr.
3 Buckley as the defendant's lawyer?

4 PROSPECTIVE JUROR NO. 37: Yes.

5 THE COURT: And to me as the Judge who's --

6 PROSPECTIVE JUROR NO. 37: Yeah, yes.

7 THE COURT: -- got to ensure a fair trial?

8 PROSPECTIVE JUROR NO. 37: Uh-huh.

9 THE COURT: That's my job.

10 PROSPECTIVE JUROR NO. 37: Yes.

11 THE COURT: Would you deliver a fair trial?

12 PROSPECTIVE JUROR NO. 37: Yes, I would.

13 THE COURT: All right. Any questions?

14 MR. BUCKLEY: Thank you, Your Honor.

15 Good afternoon, ma'am.

16 PROSPECTIVE JUROR NO. 37: Hey.

17 THE COURT: I do have another one.

18 You also raised your hand in response to a
19 question of having friends or family in law enforcement.

20 PROSPECTIVE JUROR NO. 37: No. I have some friends
21 that are lawyers, but they're like civil rights and
22 constitution, so I don't know if that's the same.

23 THE COURT: Is there anything about their work and
24 their relationship to you that would affect your judgment if
25 you were to be on this jury?

1 PROSPECTIVE JUROR NO. 37: No, hu-huh.

2 THE COURT: I think that was it.

3 MR. BUCKLEY: Thank you, Your Honor.

4 Following up on your discussion with the Judge
5 about your commitment to be fair and impartial, let's assume
6 for a moment that the prosecution puts on some evidence of
7 guilt and it's evidence that offends you deeply on a personal
8 level that makes you angry and upset and gives you the strong
9 opinion that the defendant deserves to be punished; but when
10 you read the Court's instructions, if you follow the
11 instructions, you cannot convict the defendant beyond a
12 reasonable doubt.

13 Would you have a concern in a situation like
14 that about your ability to follow the Court's instructions
15 even though you might be very emotionally affected?

16 PROSPECTIVE JUROR NO. 37: That I am not really
17 sure.

18 MR. BUCKLEY: And so, understanding that, and you're
19 human and none of us are asking you to be anything but human,
20 understanding that you may be very affected by what you hear
21 in this case, we need to know now whether you can absolutely
22 commit and take an oath that no matter how upset you might be
23 at the evidence that you can follow the Court's instructions
24 no matter how that makes you feel. Are you able to make that
25 commitment here today?

1 PROSPECTIVE JUROR NO. 37: I would like to say yes,
2 but, you know --

3 THE COURT: Doesn't matter what you like.

4 PROSPECTIVE JUROR NO. 37: Yeah, I mean --

5 THE COURT: I need to know what you are able to do.

6 PROSPECTIVE JUROR NO. 37: Yeah, uh-huh.

7 THE COURT: And will do, not what you wish to do.

8 PROSPECTIVE JUROR NO. 37: I think it would be
9 difficult, but I think I can definitely do it.

10 MR. BUCKLEY: Are you able to commit to us and give
11 us your word now that you will do it no matter what?

12 PROSPECTIVE JUROR NO. 37: Yeah, I would do it.

13 MR. BUCKLEY: Thank you, ma'am. Nothing further.

14 THE COURT: You understand how important this is?

15 PROSPECTIVE JUROR NO. 37: Oh, yeah. I know how it
16 can really affect someone's life.

17 THE COURT: Have we got a question from the
18 government?

19 MS. ZACK: No, Your Honor.

20 THE COURT: Thank you very much for your time. I
21 hope you got lunch.

22 Come on up No. 40.

23 PROSPECTIVE JUROR NO. 40: [REDACTED].

24 THE COURT: I don't want to know your name.

25 PROSPECTIVE JUROR NO. 40: I know yours.

1 THE COURT: I am protecting your privacy. We do not
2 want names. You are No. 40.

3 PROSPECTIVE JUROR NO. 40: Okay.

4 THE COURT: You raised your hand in response to a
5 question about having family members or friends in law
6 enforcement. And who is that?

7 PROSPECTIVE JUROR NO. 40: Can I give you a name?

8 THE COURT: Yes.

9 PROSPECTIVE JUROR NO. 40: Tommy Goodfellow. He's a
10 Sergeant on the Virginia Beach Police Department.

11 THE COURT: Does he share with you many of the
12 details of his work?

13 PROSPECTIVE JUROR NO. 40: He was a deacon in our
14 church, and so I had a very close relationship with him.

15 THE COURT: Is that a yes?

16 PROSPECTIVE JUROR NO. 40: Yes.

17 THE COURT: Did he share with you any details of the
18 kind of work on cases that might present issues similar to
19 what we have here?

20 PROSPECTIVE JUROR NO. 40: I don't think so.

21 THE COURT: Is there anything about his relationship
22 and friendship with you and the kind of work he does that
23 would any way affect your judgment if you were to be on this
24 jury?

25 I asked that series of questions about how you

1 would view the credibility of the people who worked in law
2 enforcement. And the bottom line standard is that you have
3 to view the testimony of every individual --

4 PROSPECTIVE JUROR NO. 40: Right.

5 THE COURT: -- on-on-one as an individual.

6 PROSPECTIVE JUROR NO. 40: I understand.

7 THE COURT: I think you would probably agree that
8 law enforcement officers are like the rest of us human
9 beings. Some are better than others, some are honest and
10 some are not.

11 PROSPECTIVE JUROR NO. 40: For sure.

12 THE COURT: You can consider the fact of someone's
13 work and type of work and training they do and have but only
14 on a case-by-case, a person-by-person basis after they
15 testify. You can't sort of presume that every law
16 enforcement officer is more truthful than other witnesses, or
17 less.

18 PROSPECTIVE JUROR NO. 40: I understand that.

19 THE COURT: Would you be able to make that kind of
20 individualized assessment?

21 PROSPECTIVE JUROR NO. 40: Absolutely.

22 THE COURT: Even though you have a close
23 relationship with somebody that's in law enforcement?

24 PROSPECTIVE JUROR NO. 40: Absolutely.

25 THE COURT: Anywhere else you raised your hand?

1 MS. ZACK: Criminal case.

2 THE COURT: Oh, personal interest in the outcome of
3 a criminal case. Thank you. Can you tell us about that?

4 PROSPECTIVE JUROR NO. 40: I had a man breaking in
5 and took him to court.

6 THE COURT: So you were a victim and a witness?

7 PROSPECTIVE JUROR NO. 40: Certainly. Our church
8 was the victim, and I was the witness.

9 THE COURT: Were you satisfied that the process was
10 a fair process?

11 PROSPECTIVE JUROR NO. 40: Oh, yes, yes, ma'am.

12 THE COURT: Was there anything about that
13 experience, which is very different from anything we are
14 going to be talking about in this case, that experience, in
15 any way is it likely to affect your judgment if you were to
16 be on this jury?

17 PROSPECTIVE JUROR NO. 40: No.

18 THE COURT: You have mentioned several times that
19 you are very active in your church.

20 PROSPECTIVE JUROR NO. 40: I'm the pastor.

21 THE COURT: I don't know anything about the position
22 of your church or you as an individual as a religious man --

23 PROSPECTIVE JUROR NO. 40: Right.

24 THE COURT: -- towards some of the issues in the
25 case. I assume that nobody likes the subject matter of this,

1 but I need to be sure that neither sexual orientation or
2 sexual preference is going to create a possible bias or
3 prejudice on your part, a religious or any other reason?

4 PROSPECTIVE JUROR NO. 40: I certainly don't think
5 it would.

6 THE COURT: And would you be -- sometimes if we are
7 aware that we might be prone to certain kind of positions or
8 biases, we can say "I am not going to."

9 PROSPECTIVE JUROR NO. 40: I'm not going to.

10 THE COURT: I am not going to let it affect me. I
11 am going to put it out of my mind. Would you be able to do
12 that?

13 PROSPECTIVE JUROR NO. 40: I think I would.

14 THE COURT: Do you understand how important it is?

15 PROSPECTIVE JUROR NO. 40: Sure. I certainly do.

16 THE COURT: Maybe I can ask the question this way.
17 One of the instructions I give every jury, in deliberating to
18 a verdict you may not be influenced by bias, by prejudice, by
19 anger, by fear, by sympathy.

20 PROSPECTIVE JUROR NO. 40: Right.

21 THE COURT: You must be objective. You must ask
22 yourself, is the evidence presented, evidence in this
23 courtroom, not what I hear in the news, not what I read in
24 the paper, in this courtroom, has that, based on the Court's
25 instructions, convinced me beyond a reasonable doubt that the

1 defendant is guilty of every element, of every offense
2 charged? That's the standard. Can you follow that?

3 PROSPECTIVE JUROR NO. 40: Yes, ma'am.

4 THE COURT: Not an A for effort.

5 PROSPECTIVE JUROR NO. 40: I understand.

6 THE COURT: Not I am really going to try. I can do
7 this. I will do this.

8 PROSPECTIVE JUROR NO. 40: I understand.

9 THE COURT: You understand how important it is?

10 PROSPECTIVE JUROR NO. 40: I do.

11 MR. BUCKLEY: Nothing from us, Your Honor. Thank
12 you, sir.

13 MS. ZACK: I have a question.

14 Do you have any concern that you may bring the
15 idea of forgiveness into your ability to evaluate the facts
16 and circumstances? You may at some point feel sorry for
17 someone, whether it's the defendant or a witness or someone
18 else? Will you be able to able to separate --

19 PROSPECTIVE JUROR NO. 40: Bring out the perfect
20 balance, whether it needs to be judged, whether I think it
21 should be tenderness.

22 MS. ZACK: No issue sitting and judging the facts in
23 this case?

24 PROSPECTIVE JUROR NO. 40: I do not.

25 MS. ZACK: Okay. Thank you.

1 THE COURT: Thank you, sir. Just take the seat you
2 currently occupy.

3 Next, please. No. 41, how are you, sir?

4 PROSPECTIVE JUROR NO. 41: Okay.

5 MR. BUCKLEY: I believe it's a hardship.

6 THE COURT: You raised your hand about a significant
7 hardship in jury duty.

8 PROSPECTIVE JUROR NO. 41: Yeah. I had a problem.
9 I am out of work right now, so I am looking for a job. So on
10 a daily basis I am applying for positions. Being away for a
11 long time would be very difficult.

12 THE COURT: Oh, it's not a long time. It's
13 basically today, tomorrow, Friday, Monday, maybe Tuesday.

14 Would you be able to make yourself available
15 for this?

16 PROSPECTIVE JUROR NO. 41: One or two days, that's
17 okay.

18 THE COURT: Listen to my question. If someone says
19 we want an interview with you, could you say, I have got
20 federal jury duty and I can't come Monday but I can come
21 Wednesday?

22 PROSPECTIVE JUROR NO. 41: I don't know about that.

23 THE COURT: How difficult is it?

24 PROSPECTIVE JUROR NO. 41: Can I be excused one day
25 and --

1 THE COURT: No, no. But we will proceed with the
2 case efficiently.

3 PROSPECTIVE JUROR NO. 41: Okay. Yeah. That was my
4 concern, like if I can come.

5 THE COURT: And if you had to leave early one day to
6 go for an interview, we could probably accommodate an hour
7 early or something like that.

8 PROSPECTIVE JUROR NO. 41: Okay.

9 I wanted to mention that according to -- and I
10 feel strongly about sex trafficking and --

11 THE COURT: Nobody likes it. But that's not the
12 point.

13 PROSPECTIVE JUROR NO. 41: -- exploitation of
14 minors.

15 THE COURT: Sure. Have you already --

16 PROSPECTIVE JUROR NO. 41: If I can put the bias
17 away, that will be fine.

18 THE COURT: One of my instructions to all members of
19 the jury is that you cannot allow yourself to be influenced
20 by bias or prejudice or sympathy.

21 PROSPECTIVE JUROR NO. 41: Yeah.

22 THE COURT: Can you follow that instruction?

23 PROSPECTIVE JUROR NO. 41: I have not done this
24 before so --

25 THE COURT: Very few people have.

1 PROSPECTIVE JUROR NO. 41: This will be the first
2 time.

3 THE COURT: Not A for effort. Can you follow that
4 instruction and not allow any bias or prejudice --

5 PROSPECTIVE JUROR NO. 41: Yes.

6 THE COURT: -- to affect your judgment? Just give
7 me an honest answer.

8 PROSPECTIVE JUROR NO. 41: I hope so.

9 THE COURT: That's not enough. You have to be able
10 to give us more than "I hope" or "I'll try."

11 PROSPECTIVE JUROR NO. 41: Yes. I feel strongly
12 about those things.

13 THE COURT: Everybody feels strongly about it.

14 You're an engineer?

15 PROSPECTIVE JUROR NO. 41: Yeah. That is right.

16 THE COURT: You understand evidence. You understand
17 facts?

18 PROSPECTIVE JUROR NO. 41: Yeah, sure.

19 THE COURT: Can you base your decision in this case
20 on the evidence the government presents and my instructions
21 on the law, which include, you have to be satisfied that the
22 government's proof establishes the defendant's guilt beyond a
23 reasonable doubt? Can you do that and not be influenced by
24 your dislike of the allegations or the issues so that you
25 would want to convict even if the government didn't prove

1 what it needed to prove?

2 PROSPECTIVE JUROR NO. 41: I will try my best.

3 THE COURT: I understand you are going to try, sir.

4 Would you be able to do that?

5 PROSPECTIVE JUROR NO. 41: Yeah, sure.

6 THE COURT: You understand how important it is?

7 PROSPECTIVE JUROR NO. 41: Yeah, I do.

8 THE COURT: You have to do more than try.

9 PROSPECTIVE JUROR NO. 41: Okay.

10 THE COURT: Let me put it this way: If you were the
11 defense lawyer, would you be frightened of having you on the
12 jury, worried about you because you would start out leaning
13 against the defendant?

14 PROSPECTIVE JUROR NO. 41: As I mentioned, the two
15 things I feel strongly about.

16 THE COURT: We all do. But that's not my question.

17 Would you be able to follow the Court's
18 instructions and not start out leaning in favor of conviction
19 and against the defendant? Would you be able to set that
20 aside --

21 PROSPECTIVE JUROR NO. 41: Yes.

22 THE COURT: -- and start out with an even playing
23 field?

24 PROSPECTIVE JUROR NO. 41: Yes.

25 THE COURT: So you can look at Mr. Buckley and say,

1 I am a good, fair and impartial juror. I don't start out
2 leaning against your client?

3 PROSPECTIVE JUROR NO. 41: Yeah, sure.

4 THE COURT: Go ahead, Mr. Buckley.

5 MR. BUCKLEY: Thank you, Your Honor.

6 Good afternoon, sir. Thank you for your
7 honesty, first of all.

8 If you're on this jury and the prosecution puts
9 on evidence about sex trafficking and the evidence makes you
10 very upset and very angry, not only because of the evidence
11 itself but because of your own personal feelings and then you
12 hear the Judge's instructions, and even though you feel very
13 strongly that the defendant deserves to be punished, the
14 Judge's instructions don't allow you to do that, would that
15 be a problem for you?

16 PROSPECTIVE JUROR NO. 41: I mean, I will listen to
17 the evidence, what is presented, yeah.

18 MR. BUCKLEY: Let me try to ask it maybe a slightly
19 different way.

20 If the evidence in this case made you very
21 upset and very angry, could that cause you difficulty in
22 following the Judge's instructions?

23 PROSPECTIVE JUROR NO. 41: I don't think so.

24 MR. BUCKLEY: And understanding your feelings about
25 that, are you able to promise all of us now in advance,

1 without having heard any evidence, are you able to promise
2 us, guarantee us that when the time comes to hear the Judge's
3 instructions that you can absolutely follow them?

4 PROSPECTIVE JUROR NO. 41: Yes.

5 MR. BUCKLEY: Thank you, sir.

6 THE COURT: Questions?

7 MS. ZACK: No, Your Honor.

8 THE COURT: Thank you, sir. Please be seated. Take
9 the seat you currently occupy.

10 Next, 43. How are you today?

11 PROSPECTIVE JUROR NO. 43: I'm good. Thank you.

12 THE COURT: You had friends or family members in law
13 enforcement?

14 PROSPECTIVE JUROR NO. 43: Not law enforcement, but
15 the attorney. I know a criminal attorney. That's what I
16 raised my hand on. Do you need the name? It's a friend, I
17 mean, pretty close.

18 THE COURT: Does this person share with you many of
19 the details of her work?

20 PROSPECTIVE JUROR NO. 43: No.

21 THE COURT: Is there any information you have that
22 they're involved in cases similar to the issues raised here?

23 PROSPECTIVE JUROR NO. 43: Not that I'm aware of.

24 THE COURT: Is there anything about your friendship
25 with that person that would in any way affect your judgment

1 if you were to be on this jury?

2 PROSPECTIVE JUROR NO. 43: No, it would not.

3 I do want to share with you, though, a question
4 I had that wouldn't affect my judgment, but I thought I'd
5 share it any way.

6 THE COURT: Please keep your voice down.

7 PROSPECTIVE JUROR NO. 43: I'm a geriatric social
8 worker, and some of my case management clients, not
9 counseling clients, were abused sexually.

10 THE COURT: In nursing homes?

11 PROSPECTIVE JUROR NO. 43: Well, when they were
12 younger.

13 THE COURT: But you weren't involved in that?

14 PROSPECTIVE JUROR NO. 43: I was not involved, yeah;
15 but I did want to just to make sure you were aware of that.

16 THE COURT: And is there anything about that
17 exposure that you've had, very different setting --

18 PROSPECTIVE JUROR NO. 43: Yes.

19 THE COURT: -- that would in any way affect your
20 judgment if you were to be on this jury?

21 PROSPECTIVE JUROR NO. 43: No.

22 THE COURT: Questions? I think those are the only
23 questions you raised your hand on.

24 PROSPECTIVE JUROR NO. 43: No. It was only that
25 one, and then I brought up the other.

1 MR. BUCKLEY: Nothing from us, Your Honor.

2 MS. ZACK: Nothing.

3 THE COURT: Just be seated, please, ma'am. Thank
4 you.

5 Next, No. 44. How are you?

6 PROSPECTIVE JUROR NO. 44: I'm doing great.

7 THE COURT: I hope you got lunch.

8 You raised your hand in response to the
9 question about having, being part of a prosecution office,
10 friends or family members, and also law enforcement.

11 PROSPECTIVE JUROR NO. 44: Well, my husband is a
12 criminal attorney, defense. I have siblings that are law
13 enforcement, I have friend that are judges, I have FBI.

14 THE COURT: Is there anything -- have any of these
15 people shared with you details of their work in areas that
16 were similar to what we are dealing with in this case?

17 PROSPECTIVE JUROR NO. 44: No.

18 THE COURT: Is there anything about the
19 relationships that you have with these individuals and their
20 jobs that would in any way affect your judgment if you were
21 to be on this jury?

22 PROSPECTIVE JUROR NO. 44: No.

23 THE COURT: Let me make sure this is the only time
24 you raised your hand. You were worried about being fair and
25 given the subject area.

1 PROSPECTIVE JUROR NO. 44: Yes, because you said
2 minors. So I just want to be truthful and say that I know my
3 friends, my friends have heard me say that whenever I hear
4 anything about a sexual abuse with a minor, I have said that
5 jail is not good enough.

6 THE COURT: But the jury aren't involved in
7 punishment.

8 PROSPECTIVE JUROR NO. 44: Okay.

9 THE COURT: That's not your issue. Your issue is
10 whether the prosecution has proven guilt beyond a reasonable
11 doubt. And that standard doesn't shift or get lighter
12 because the allegation involves minors. It's the same.

13 PROSPECTIVE JUROR NO. 44: Okay.

14 THE COURT: Okay. And that means beyond a
15 reasonable doubt. It's not beyond all possibility doubt.
16 But it means that the government's proof would satisfy you in
17 making decisions in the most important of your own affairs.
18 It has to be that high. So it would have to be the kind of
19 evidence you would rely on in deciding where to live, who to
20 marry, what kind of work, where you would go to school,
21 whether to have children, when to have children, the most
22 important of your own affairs.

23 PROSPECTIVE JUROR NO. 44: Yes.

24 THE COURT: Would you be able to require the
25 government to come forward with that level of proof before

1 you returned a verdict of guilty?

2 PROSPECTIVE JUROR NO. 44: Yes.

3 THE COURT: Would you be tempted to find the
4 defendant guilty if the government produced -- and this is
5 just, let's say, for the sake of discussion -- produced some
6 evidence of guilt but not beyond a reasonable doubt? Would
7 you be willing at that point and able --

8 PROSPECTIVE JUROR NO. 44: Uh-huh.

9 THE COURT: -- to say to the government, you didn't
10 prove enough, not guilty?

11 PROSPECTIVE JUROR NO. 44: Regardless of the
12 evidence?

13 THE COURT: No.

14 PROSPECTIVE JUROR NO. 44: If the government does
15 not prove it?

16 THE COURT: Some evidence but not beyond a
17 reasonable doubt.

18 PROSPECTIVE JUROR NO. 44: To me, and could I come
19 back in and --

20 THE COURT: Would you come back in and say not
21 guilty?

22 PROSPECTIVE JUROR NO. 44: Then yes.

23 THE COURT: Would you be tempted to kind of reach to
24 convict the defendant even if there wasn't enough evidence to
25 meet my instructions on the law?

1 PROSPECTIVE JUROR NO. 44: No. I think I can follow
2 your instructions.

3 THE COURT: Well, you have to do more than you think
4 you could. This is not the little -- this doesn't have an A
5 for effort.

6 PROSPECTIVE JUROR NO. 44: Right.

7 THE COURT: This is the little engine that did, not
8 the little engine that was hoping it could.

9 Could you be the engine that did?

10 PROSPECTIVE JUROR NO. 44: Yes.

11 MR. BUCKLEY: Briefly, Your Honor.

12 Good afternoon, ma'am.

13 PROSPECTIVE JUROR NO. 44: Good afternoon.

14 MR. BUCKLEY: A slight variation on this discussion.
15 If you serve on the jury and the prosecution puts on some
16 evidence of guilt and other evidence that convinces you on a
17 personal level regarding your feelings about the sexual abuse
18 of minors, evidence that convinces you the defendant deserves
19 to be punished, but then when you see the Court's
20 instructions, if you follow the instructions, you cannot
21 convict the defendant, would that be a -- would you be able
22 to follow instructions under those circumstances even if you
23 felt that it committed a grave offense?

24 PROSPECTIVE JUROR NO. 44: Yes.

25 MR. BUCKLEY: And you can promise all of us here

1 that no matter what your personal feelings are, including
2 anger or frustration, that you will follow your oath to
3 follow the Court's instructions no matter what the result is?
4 Are you able to make that commitment to us now?

5 PROSPECTIVE JUROR NO. 44: Yes.

6 MR. BUCKLEY: Thank you, ma'am.

7 THE COURT: Ms. Zack.

8 MS. ZACK: Yes, ma'am.

9 I understand you say you have strong feelings
10 about the subject matter, but I want to go back to your
11 husband's a criminal defense attorney, and he goes up against
12 the prosecution day in and day out. Are you going to have
13 trouble, if you believe Ms. Leo and I proved our case, going
14 home and telling your husband "I convicted somebody?"

15 PROSPECTIVE JUROR NO. 44: Would I have to tell him?

16 THE COURT: Good question, Ms. Zack. Ask it again.

17 MS. ZACK: Let me rephrase it.

18 Would it make you -- would you be
19 uncomfortable, knowing what your husband does, finding
20 someone guilty if you believed the government proved the
21 elements beyond a reasonable doubt?

22 PROSPECTIVE JUROR NO. 44: Okay. Can you just
23 repeat it one more time so I am sure I understand.

24 THE COURT: Let me try.

25 Your husband is in business defending people

1 against criminal charges.

2 PROSPECTIVE JUROR NO. 44: Yes.

3 THE COURT: If you found that the government had met
4 its burden of proving guilt beyond a reasonable doubt --

5 PROSPECTIVE JUROR NO. 44: Okay.

6 THE COURT: -- would you vote to convict knowing
7 that you would have to go home and say to your husband: I
8 know what you do for a living, and I voted against it. If
9 you were the defense lawyer, you wouldn't like what I did.

10 PROSPECTIVE JUROR NO. 44: Oh, I see what you mean.
11 Yes, I could do that.

12 MS. ZACK: You're okay with that?

13 PROSPECTIVE JUROR NO. 44: Yes. I could do that.

14 THE COURT: Okay.

15 MS. ZACK: Sorry for my inartful question.

16 THE COURT: You weren't articulate. It's a funny
17 concept.

18 But thank you very much for your honest answers
19 to us.

20 Any other questions, counsel?

21 MR. BUCKLEY: Nothing from us, ma'am. Thank you.

22 MS. ZACK: Thank you so much, ma'am.

23 THE COURT: Just take the seat you currently occupy,
24 and thank you.

25 Next please, 45.

1 PROSPECTIVE JUROR NO. 45: Good afternoon.

2 THE COURT: How are you, sir?

3 PROSPECTIVE JUROR NO. 45: Pretty good. Thank you.

4 THE COURT: Hope you got some lunch. So let me see
5 where you raised your hand.

6 PROSPECTIVE JUROR NO. 45: I do have like two
7 questions. I know there is always somewhat -- you were
8 talking about fire and smoke.

9 THE COURT: Yes. Do you start out thinking just
10 because the defendant is here because there has been an
11 indictment, which is, as I explained, not evidence of
12 anything, just accusations, do you start out thinking, well,
13 if he hadn't done something criminal he wouldn't be here?

14 PROSPECTIVE JUROR NO. 45: Hu-huh, no, ma'am.

15 THE COURT: You understand that an indictment is not
16 smoke?

17 PROSPECTIVE JUROR NO. 45: Okay.

18 THE COURT: You understand that?

19 PROSPECTIVE JUROR NO. 45: Yeah.

20 THE COURT: So you don't think that the defendant is
21 anything but innocent standing here today?

22 PROSPECTIVE JUROR NO. 45: Yes.

23 THE COURT: And if he is guilty, it's because the
24 government has proven beyond a reasonable doubt that he's
25 guilty?

1 PROSPECTIVE JUROR NO. 45: If they have enough
2 evidence to persuade me, then yes.

3 THE COURT: And it has to be beyond a reasonable
4 doubt.

5 PROSPECTIVE JUROR NO. 45: Uh-huh.

6 THE COURT: Not beyond all possible doubt. But it
7 has to be enough evidence, the type of evidence, the amount
8 of amount of evidence that would convince you in making a
9 decision in the most important of your own affairs.

10 PROSPECTIVE JUROR NO. 45: Uh-huh.

11 THE COURT: Where to live, what kind of job to take,
12 that level of proof. Would you make the government prove
13 that before you returned a verdict of guilty?

14 PROSPECTIVE JUROR NO. 45: Yeah, of course.

15 THE COURT: So that even if there was some evidence
16 of guilt but not enough to meet that standard, would you --

17 PROSPECTIVE JUROR NO. 45: Collective amount of
18 evidence, not just one because if it's just one, it's just --

19 THE COURT: Listening to the whole case with an open
20 mind, but considering only the evidence in this courtroom,
21 not considering what you read in the paper?

22 PROSPECTIVE JUROR NO. 45: Yes.

23 THE COURT: Would you be able to say to the
24 government, there was some evidence but not enough. I'm not
25 returning a verdict of guilty. Not guilty?

1 PROSPECTIVE JUROR NO. 45: I think so, yeah.

2 THE COURT: Well --

3 PROSPECTIVE JUROR NO. 45: I know so, yeah.

4 THE COURT: You understand how important it is to be
5 able to make that commitment?

6 PROSPECTIVE JUROR NO. 45: Yes, uh-huh.

7 THE COURT: And do you make it?

8 PROSPECTIVE JUROR NO. 45: Uh-huh, yeah.

9 THE COURT: Yes?

10 PROSPECTIVE JUROR NO. 45: Yes, yes.

11 THE COURT: The court reporter can't get "uh-huh."

12 PROSPECTIVE JUROR NO. 45: Sorry.

13 MR. BUCKLEY: Nothing from us. Thank you, sir.

14 MS. ZACK: Your Honor, I had down that he mentioned
15 an unpleasant encounter with law enforcement.

16 PROSPECTIVE JUROR NO. 45: Yeah. I think it was
17 like if they're willing to, something like that.

18 THE COURT: This was a minor. Even if a minor is
19 willing to engage in sexual encounters, if they are minors,
20 the law says we don't trust you to make a judgment.

21 PROSPECTIVE JUROR NO. 45: Okay.

22 THE COURT: Like a minor can't sign a contract.

23 PROSPECTIVE JUROR NO. 45: Okay.

24 THE COURT: A minor can't say --

25 PROSPECTIVE JUROR NO. 45: They're still kids.

1 Okay. Gotcha.

2 THE COURT: Exactly.

3 So even if a minor says, you know what? I'm on
4 the street, I need money. If you want to sell my time for a
5 sexual purposes, it's okay with me, you still can't do it.

6 PROSPECTIVE JUROR NO. 45: Okay, because it's the
7 law, right?

8 THE COURT: Because it's the law.

9 Can you apply that?

10 PROSPECTIVE JUROR NO. 45: Yeah. So, on emotional
11 attachments, I can do that in this trial.

12 THE COURT: And by the same token, I don't know if
13 you have a particular feeling about people who are gay or if
14 you have a particular feeling about people who have thoughts
15 that you wouldn't have, that you don't like but who don't act
16 out on those thoughts.

17 PROSPECTIVE JUROR NO. 45: I was still like, it's
18 like --

19 THE COURT: Can you say to the guy who you may not
20 want to have as a friend, you have been charged with these
21 offenses, and I don't really care what you thought, if that's
22 all you did, and I don't really care what your sexual
23 preference is. I care whether the government has proven your
24 guilt of these actions, these offenses beyond a reasonable
25 doubt. Can you set aside any bias or prejudice you might

1 have?

2 PROSPECTIVE JUROR NO. 45: Not just -- I guess say
3 open minded and just --

4 THE COURT: And open minded and closed minded at the
5 same time. So you're open minded that you consider the
6 evidence, but you're deaf to the possible impact or influence
7 of any bias or prejudice.

8 PROSPECTIVE JUROR NO. 45: Yes.

9 THE COURT: And you don't let it affect you.

10 PROSPECTIVE JUROR NO. 45: Consider both sides of
11 the same coin is what I'm hearing. Yeah, I can do it.

12 THE COURT: And you will do it?

13 PROSPECTIVE JUROR NO. 45: Yeah, definitely, yeah,
14 yeah.

15 Anything?

16 MR. BUCKLEY: Nothing from us, Your Honor.

17 THE COURT: Ms. Zack?

18 MS. ZACK: No.

19 THE COURT: Thank you. Just take the seat you
20 currently occupy.

21 Next, please, 46.

22 PROSPECTIVE JUROR NO. 46: Good afternoon, Your
23 Honor. Good afternoon, ladies and gentlemen. How are you?

24 MR. BUCKLEY: Good afternoon.

25 THE COURT: You raised your hand that you have done

1 some counseling?

2 PROSPECTIVE JUROR NO. 46: I beg your pardon? No, I
3 must have misunderstood the question. I answered for one of
4 being associated with an individual who's worked for a
5 district attorney.

6 THE COURT: And who is that individual?

7 PROSPECTIVE JUROR NO. 46: My girlfriend.

8 THE COURT: What kind of work does she do?

9 PROSPECTIVE JUROR NO. 46: She actually pulls files.
10 She was a filing assistant.

11 THE COURT: Is there anything about her job and the
12 fact she's your girlfriend that would affect your judgment if
13 you were elected on this jury?

14 PROSPECTIVE JUROR NO. 46: No, absolutely not.

15 THE COURT: And I think that's the only time you
16 raised your hand; is that right?

17 PROSPECTIVE JUROR NO. 46: I believe I misunderstood
18 the very last, one of the very last questions. I just want
19 to clarify on it.

20 THE COURT: I think I asked if you had been involved
21 in any kind of counseling.

22 PROSPECTIVE JUROR NO. 46: Oh, yes. That would be
23 on that.

24 THE COURT: Have you been?

25 PROSPECTIVE JUROR NO. 46: No, no. Sorry. I

1 misunderstood the question.

2 THE COURT: Any questions, counsel?

3 MR. BUCKLEY: Nothing from us, Your Honor.

4 THE COURT: Ms. Zack?

5 MS. ZACK: No, Your Honor.

6 THE COURT: Thank you, sir.

7 PROSPECTIVE JUROR NO. 46: Thank you very much.

8 THE COURT: What kind of stuff do you cook?

9 PROSPECTIVE JUROR NO. 46: At the school we do a
10 wide variety of different preparations, from Asian, Italian,
11 American. We go all around. I primarily worked cold foods,
12 so I did a lot of salads and stuff, but I recently got
13 promoted to sous-chef.

14 THE COURT: Oh, congratulations.

15 PROSPECTIVE JUROR NO. 46: They are training me on a
16 lot more of the other managerial aspects such as ordering and
17 all that, so I am really looking forward to getting to do
18 that.

19 THE COURT: Good luck to you.

20 PROSPECTIVE JUROR NO. 46: Thank you very much, Your
21 Honor.

22 THE COURT: Next, please. Just take the seat you
23 currently occupy, please, sir.

24 No. 47, how are, sir?

25 PROSPECTIVE JUROR NO. 47: Good. How are you?

1 THE COURT: Good. I hope you were able to get some
2 lunch.

3 You raised your hand early on in response to a
4 question if there is smoke there is fire, and I need to be
5 sure you understand there is no smoke.

6 PROSPECTIVE JUROR NO. 47: Okay.

7 THE COURT: The fact that the defendant has an
8 indictment against him is just the mechanism used to get a
9 case into court.

10 PROSPECTIVE JUROR NO. 47: Okay.

11 THE COURT: Not evidence of guilt in any way.

12 PROSPECTIVE JUROR NO. 47: Okay.

13 THE COURT: So with that information, do you still
14 find yourself thinking that if the defendant hadn't done
15 something wrong, he wouldn't be here today?

16 PROSPECTIVE JUROR NO. 47: Yeah. The reason I
17 raised my hand is because when you asked the question, I was
18 exactly thinking the same thing, the question came to my
19 mind; but, I mean, I still can be impartial.

20 THE COURT: Can you put aside that initial reaction,
21 completely forget about it and not allow it to affect you at
22 all?

23 PROSPECTIVE JUROR NO. 47: I think so.

24 THE COURT: That's not good enough. We don't give A
25 for effort.

1 PROSPECTIVE JUROR NO. 47: Okay. Yeah, I can.

2 THE COURT: These are serious rights we are talking
3 about.

4 PROSPECTIVE JUROR NO. 47: Okay.

5 THE COURT: Will you put that aside and not allow it
6 to affect your judgment?

7 PROSPECTIVE JUROR NO. 47: I will.

8 THE COURT: So that both sides are going to start
9 out, you don't start out thinking he's probably guilty --

10 PROSPECTIVE JUROR NO. 47: Okay.

11 THE COURT: -- at all.

12 PROSPECTIVE JUROR NO. 47: Okay.

13 THE COURT: In fact, it's just the opposite. You
14 start out thinking he's as innocent as I am unless and until
15 the government proves that he's guilty of these offenses and
16 proves it beyond a reasonable doubt. Can you make the
17 government do that before you can think that the defendant is
18 guilty?

19 PROSPECTIVE JUROR NO. 47: I will.

20 THE COURT: You understand how important it is?

21 PROSPECTIVE JUROR NO. 47: Yes.

22 THE COURT: And you indicated you knew somebody that
23 worked for Homeland Security?

24 PROSPECTIVE JUROR NO. 47: Yeah. When I got my
25 green card processed, I went to the immigration office, and

1 they lost my file. So it's kind of a strike during the
2 period the period of time, but that's not really how the
3 duration except --

4 THE COURT: And I understand. How long ago was
5 that?

6 PROSPECTIVE JUROR NO. 47: At least 10 years ago.

7 THE COURT: And obviously it involved totally
8 different people than this case involves?

9 PROSPECTIVE JUROR NO. 47: Yes.

10 THE COURT: Does that experience, is that likely to
11 affect your judgment in any way given that some of the agents
12 are from the same department even though they in all
13 likelihood were not involved in anything relating to you?

14 PROSPECTIVE JUROR NO. 47: Understood. I should be
15 able to make a judgment.

16 THE COURT: Would you hold it against the government
17 that this agency was -- my guess is that you believe them to
18 have been less than competent --

19 PROSPECTIVE JUROR NO. 47: Yes.

20 THE COURT: -- during the handling of your file?

21 PROSPECTIVE JUROR NO. 47: Yes.

22 THE COURT: Is that a fair statement?

23 PROSPECTIVE JUROR NO. 47: Yes.

24 THE COURT: And you were pretty frustrated?

25 PROSPECTIVE JUROR NO. 47: I was frustrated, yes.

1 THE COURT: Would you be able to set aside those
2 understandable feelings and not allow them to in any way
3 influence you if you were a juror in this case?

4 PROSPECTIVE JUROR NO. 47: I can, yeah.

5 THE COURT: And you will?

6 PROSPECTIVE JUROR NO. 47: Yeah, I will.

7 THE COURT: Questions.

8 MR. BUCKLEY: Quickly, Your Honor.

9 Good afternoon, sir. Going back to the
10 discussion about being fair and impartial and also
11 understanding that you have no idea now what the evidence in
12 this case will actually be, do you have -- in your
13 conversation with the Judge you made a commitment that you
14 will follow her instructions. No matter what her
15 instructions are, you will follow them, right?

16 PROSPECTIVE JUROR NO. 47: Uh-huh.

17 MR. BUCKLEY: If you hear evidence in this case that
18 makes you very upset and angry and you feel that following
19 the Judge's instructions would produce an unfair result or
20 result that makes you angry, would you still be able to
21 follow the instructions?

22 THE COURT: The question is basically asking, I may
23 not like it, but the Judge has instructions that tell me
24 that's what I need to do.

25 PROSPECTIVE JUROR NO. 47: I will follow your

1 instructions.

2 THE COURT: Even if you were writing the law, you'd
3 write it differently?

4 PROSPECTIVE JUROR NO. 47: Uh-huh.

5 THE COURT: Even if you disagreed with my
6 instructions on what the law is, would you follow them?

7 PROSPECTIVE JUROR NO. 47: I will.

8 THE COURT: Even if you were thinking, I'd really
9 like to convict this guy, but there's just not enough
10 evidence there, could you do that, not guilty?

11 PROSPECTIVE JUROR NO. 47: I don't know.

12 THE COURT: No. Could you do that? The government
13 didn't prove guilt beyond a reasonable doubt -- you remember
14 the standard -- would you look at them and say, I don't enjoy
15 this verdict, but this is what the instructions on the law
16 and the evidence you presented, this is what I need to do?

17 PROSPECTIVE JUROR NO. 47: I can, yeah.

18 THE COURT: And will you?

19 PROSPECTIVE JUROR NO. 47: I will, yeah.

20 THE COURT: Even if you don't like it, you'll do it?

21 PROSPECTIVE JUROR NO. 47: I guess, yeah.

22 THE COURT: No. Can't guess.

23 PROSPECTIVE JUROR NO. 47: Okay. Yeah, I can.

24 THE COURT: You understand how important this is?

25 PROSPECTIVE JUROR NO. 47: Yeah. I do.

1 THE COURT: You work for a company that manufactures
2 stuff that are used under conditions of heat and pressure,
3 right?

4 PROSPECTIVE JUROR NO. 47: Yes.

5 THE COURT: You can't guess, well, maybe it's right?

6 PROSPECTIVE JUROR NO. 47: Okay.

7 THE COURT: It's dangerous to people, right?

8 PROSPECTIVE JUROR NO. 47: Yeah, yeah.

9 THE COURT: You have to be sure. Can you be sure?

10 PROSPECTIVE JUROR NO. 47: Yes. I will definitely
11 be sure, definitely I will be for sure, yes.

12 THE COURT: The same standard here.

13 PROSPECTIVE JUROR NO. 47: Okay.

14 THE COURT: You don't guess that you did it right.
15 You are sure you did it right?

16 PROSPECTIVE JUROR NO. 47: I will follow the
17 instruction, yes.

18 MR. BUCKLEY: Can you commit that you will follow
19 the instructions even if you believe that following the
20 instructions will let someone get away with something that
21 they should be punished for? Are you able to do that even
22 if --

23 THE COURT: You would like to have them punished
24 for, not that they should be.

25 MR. BUCKLEY: That's a good point, Your Honor.

1 That you would want them, like someone to be
2 punished, but following the Judge's instructions --

3 THE COURT: Convicted for it because the jurors
4 don't have anything to do with punishment.

5 MR. BUCKLEY: That's right, Your Honor.

6 Could you let someone walk free with a not
7 guilty following the Judge's instructions if you believe
8 strongly that they deserve to be punished?

9 PROSPECTIVE JUROR NO. 47: I don't think so.

10 MR. BUCKLEY: That would cause a problem for you
11 personally?

12 THE COURT: And deserved -- nobody deserves
13 punishment unless they are guilty beyond a reasonable doubt.
14 That's what the law says, so it's the same question.

15 If your honest answer is at the end of the day
16 I don't think I can do it, then I need to know that.

17 If the honest answer is, I will, I can do it
18 and I will, I need to know that. I just need to know your
19 honest answer.

20 PROSPECTIVE JUROR NO. 47: Honest, I don't think so.

21 THE COURT: All right. Thank you, sir.

22 Any other questions?

23 MR. BUCKLEY: Nothing from us, sir. Thank you.

24 THE COURT: Take a seat.

25 Next, please. No. 48, you raised your hand

1 indicating that you were concerned about your ability to be
2 fair given the nature of the subject matter?

3 PROSPECTIVE JUROR NO. 48: Yes, ma'am.

4 THE COURT: Tell me more.

5 PROSPECTIVE JUROR NO. 48: I was on a jury years ago
6 with the sexual assault of a child. It was not a pleasant
7 experience.

8 THE COURT: These are not meant to be entertaining,
9 although we do move pretty quickly.

10 Would that experience, did that experience
11 leave you with such strong feelings that you would find it
12 difficult to set them aside and follow my instructions
13 without being influence by bias or prejudice or sympathy?

14 PROSPECTIVE JUROR NO. 48: I think it would be hard
15 not to have sympathy for the victim.

16 THE COURT: Hard for everybody.

17 If I instructed you that you could not allow
18 that to influence your verdict, would you be able to follow
19 that instruction? I need your honest answer.

20 PROSPECTIVE JUROR NO. 48: I don't know if I could
21 or not.

22 THE COURT: Do you doubt your ability to do that?

23 PROSPECTIVE JUROR NO. 48: Yes, ma'am.

24 THE COURT: Any questions?

25 MR. BUCKLEY: Nothing from us, Your Honor. Thank

1 you, sir.

2 THE COURT: Just take the seat you currently occupy,
3 please, sir.

4 Next, please. No. 50, how are you today?

5 PROSPECTIVE JUROR NO. 50: Okay.

6 THE COURT: You raised your hand in response to the
7 question about being concerned that you couldn't be fair
8 given the subject matter.

9 PROSPECTIVE JUROR NO. 50: Yes. I was okay until I
10 heard the subject matter.

11 THE COURT: Nobody likes it.

12 PROSPECTIVE JUROR NO. 50: And I was kind of
13 surprised myself with my reaction to it.

14 THE COURT: Was your reaction that you already think
15 that defendant is guilty?

16 PROSPECTIVE JUROR NO. 50: Well, it wasn't so much
17 that I think he's guilty. It was more to would I be able to
18 require, you know -- well, I suppose I was.

19 THE COURT: If I instructed you that it doesn't
20 matter what the subject matter is, the government has to
21 prove guilt beyond a reasonable doubt.

22 PROSPECTIVE JUROR NO. 50: I understand that.

23 THE COURT: And that standard is enough proof to
24 convince you if you were making a decision on the most
25 important of your own affairs. So think about what those

1 decisions are. Should I marry this guy? Should I take this
2 job? Should I buy this house? Where should I live?

3 You have to be satisfied that the government
4 has met that burden of proof. It doesn't matter what the
5 allegations or the subject is. Could you do that? Would you
6 do that?

7 PROSPECTIVE JUROR NO. 50: I would try.

8 THE COURT: Not A for effort in this context, sorry.
9 You have to be able to be committed to do it because it's
10 important.

11 PROSPECTIVE JUROR NO. 50: I understand. That's why
12 I raised my hand.

13 THE COURT: And I appreciate that.

14 PROSPECTIVE JUROR NO. 50: To be very honest with
15 you, I really don't know that I could.

16 THE COURT: All right. Thank you.

17 Any questions?

18 MR. BUCKLEY: Nothing from us, Your Honor.

19 THE COURT: Thank you. Just take the seat you
20 occupied, please.

21 Next please. No. 52.

22 PROSPECTIVE JUROR NO. 52: Yes, ma'am.

23 THE COURT: How are you, sir?

24 You raised your hand in response to the
25 question that just given the subject matter you didn't

1 think -- you had a question about your ability to be fair and
2 impartial.

3 PROSPECTIVE JUROR NO. 52: Yes, ma'am.

4 THE COURT: Can you explain that a little bit.

5 PROSPECTIVE JUROR NO. 52: Sure. My revulsion to
6 pornography and --

7 THE COURT: Even involving adults?

8 PROSPECTIVE JUROR NO. 52: I do, yeah. I mean, I
9 think it has a deep impact on our culture. I have been a
10 pastor and worked with individuals in my church whose
11 marriages were falling apart because of pornography, and I've
12 worked with -- I have friends who are involved in sex
13 trafficking organizations.

14 THE COURT: Let me get to the bottom line. Would
15 these feelings and the work you've done be likely to affect
16 your judgment if you were to be on this jury?

17 PROSPECTIVE JUROR NO. 52: You asked us to raise our
18 hands if we thought there was a possibility, and I couldn't
19 say that it wouldn't.

20 THE COURT: Would you have a difficult time setting
21 them aside, these concerns, and not allowing them to enter
22 into the picture one way or the other?

23 PROSPECTIVE JUROR NO. 52: I would do my best if I
24 were chosen.

25 THE COURT: No A for effort. Would it be hard for

1 you?

2 PROSPECTIVE JUROR NO. 52: I'm sorry?

3 THE COURT: Would it be harder for you?

4 PROSPECTIVE JUROR NO. 52: Yes, it would be harder
5 for me.

6 THE COURT: And would you -- do you have concerns
7 that at the end of the day you would not be able to set aside
8 those sympathies and those biases?

9 PROSPECTIVE JUROR NO. 52: I have some concerns
10 about that, yes.

11 THE COURT: Are those significant concerns? I know
12 I am pressing, but I have to.

13 PROSPECTIVE JUROR NO. 52: I know. Yes.

14 THE COURT: Questions?

15 MR. BUCKLEY: Nothing from us, Your Honor. Thank
16 you, sir.

17 THE COURT: Just take your seat, please, the seat
18 you currently occupy. Thank you.

19 PROSPECTIVE JUROR NO. 52: Okay. Thank you. That's
20 fine. I did raise my hand on the last question also.

21 THE COURT: Significant hardship?

22 PROSPECTIVE JUROR NO. 52: Yes, ma'am.

23 THE COURT: And what is that, please, sir?

24 PROSPECTIVE JUROR NO. 52: I'm self-employed. I was
25 a pastor. I'm a consultant now. And so I had set aside the

1 rest of this week. Once it gets into next week it starts
2 costing me a lot of money.

3 THE COURT: It won't go far into next week if it
4 does.

5 PROSPECTIVE JUROR NO. 52: I have meetings on
6 Tuesday and I'm out of town on Wednesday, and it starts to
7 hit me hard.

8 THE COURT: Thank you for letting me know.

9 PROSPECTIVE JUROR NO. 52: Thank you.

10 THE COURT: Next. No. 53, you raised your hand that
11 you had concerns about being fair given the subject matter
12 involved in the case.

13 PROSPECTIVE JUROR NO. 53: That was the first one?

14 THE COURT: No. It wasn't the first time.

15 PROSPECTIVE JUROR NO. 53: I mean, the first --

16 THE COURT: You raised your hand.

17 PROSPECTIVE JUROR NO. 53: The first time I raised
18 my hand?

19 THE COURT: I don't know if it was the first time.

20 MS. ZACK: No. The first one was the defendant not
21 testifying.

22 THE COURT: Let ask you this one first. Just on the
23 subject area of the case, subject matters, are you so
24 affected by just the subject that it would be difficult for
25 you to be fair and impartial?

1 PROSPECTIVE JUROR NO. 53: I just believe that a
2 marriage is between a man and a women, not two men.

3 THE COURT: So your source of concern is just -- and
4 I say "just," I don't mean just. But you have strong beliefs
5 in the immorality of the lifestyle choice?

6 PROSPECTIVE JUROR NO. 53: Yes.

7 THE COURT: Sexual orientation?

8 PROSPECTIVE JUROR NO. 53: Yes, ma'am.

9 THE COURT: If it was marriage -- and we are not
10 talking about same sex marriages.

11 PROSPECTIVE JUROR NO. 53: I understand that.

12 THE COURT: Is your belief in the moral wrong, a
13 belief that says that being homosexual is morally wrong?

14 PROSPECTIVE JUROR NO. 53: I didn't hear everything
15 you said.

16 THE COURT: Is your belief in the moral wrong, a
17 belief that just being homosexual is morally wrong, putting
18 aside same sex marriage?

19 PROSPECTIVE JUROR NO. 53: I just don't believe in
20 it.

21 THE COURT: Do you believe that people who follow a
22 homosexual lifestyle are morally flawed in a way that would
23 affect your judgment if you were to be on this jury?

24 PROSPECTIVE JUROR NO. 53: No, ma'am.

25 THE COURT: Do you believe that they are more likely

1 to, that they are -- let me put it this way. Is your belief
2 in the religious basis for heterosexuality likely to make you
3 biased or prejudice against the defendant in this case who is
4 gay?

5 PROSPECTIVE JUROR NO. 53: I wouldn't think so.

6 THE COURT: Are you likely to believe that the
7 defendant is guilty of something?

8 PROSPECTIVE JUROR NO. 53: Is what?

9 THE COURT: Guilty of doing something criminal
10 because of his, because he is gay and follows a gay
11 lifestyle?

12 PROSPECTIVE JUROR NO. 53: No.

13 THE COURT: Doesn't matter to you?

14 So is it a fair summary, sir -- I am just
15 trying to understand where you are coming from.

16 PROSPECTIVE JUROR NO. 53: Yes, ma'am.

17 THE COURT: Is it a fair summary that you think it
18 is morally wrong for a woman to marry a woman or a man to
19 marry a man, but if a man wants to be homosexual and follow
20 that lifestyle, that doesn't bother you?

21 PROSPECTIVE JUROR NO. 53: That's up to them.
22 That's not what I believe in.

23 THE COURT: It's not your personal choice for
24 yourself --

25 PROSPECTIVE JUROR NO. 53: I understand that.

1 THE COURT: -- but you are not going to hold it
2 against somebody who makes that choice for himself or
3 herself?

4 PROSPECTIVE JUROR NO. 53: No, ma'am.

5 THE COURT: Okay.

6 Nobody likes the subject matter of sexual
7 exploitation of children, nobody likes it.

8 PROSPECTIVE JUROR NO. 53: Yes, ma'am.

9 THE COURT: That's not the test. The test is
10 whether you can start the case with an open mind not starting
11 out leaning against the defendant. So that's my first
12 question. Can you do that?

13 PROSPECTIVE JUROR NO. 53: Yes, ma'am.

14 THE COURT: And can you keep that open mind
15 throughout the case and require the government, the
16 prosecution to prove to you beyond a reasonable doubt that
17 the defendant committed the acts that are alleged in the
18 indictment?

19 PROSPECTIVE JUROR NO. 53: That's hard to answer
20 without knowing --

21 THE COURT: You haven't heard any evidence.

22 PROSPECTIVE JUROR NO. 53: Correct. That's hard to
23 answer the question.

24 THE COURT: I know. But it's really not.

25 The question is, let's assume that the

1 government produces some evidence of guilt.

2 PROSPECTIVE JUROR NO. 53: Okay.

3 THE COURT: But not evidence beyond a reasonable
4 doubt.

5 PROSPECTIVE JUROR NO. 53: Okay.

6 THE COURT: And that standard is enough evidence to
7 convince you in making a decision on the most important of
8 your own affairs. So it would have to be the same amount and
9 strength of proof that you would rely on in deciding who to
10 marry, where to live, what kind of work to get, whether to
11 buy a house.

12 PROSPECTIVE JUROR NO. 53: Yes, ma'am.

13 THE COURT: Would you require the government to have
14 that much proof before you said "I'll commit?"

15 PROSPECTIVE JUROR NO. 53: That's a harder -- that's
16 just something I can't answer right now.

17 THE COURT: So you just don't know?

18 PROSPECTIVE JUROR NO. 53: I mean, yeah, I just
19 don't know because there's -- if I don't know -- if I am
20 selected and I hear everything, then I don't know --

21 THE COURT: Let's assume for the purpose of this
22 discussion that the government produces some evidence of
23 guilt but not beyond a reasonable doubt.

24 PROSPECTIVE JUROR NO. 53: Okay.

25 THE COURT: Let's just assume that. Would you be

1 tempted to convict just because of the nature of the
2 allegations?

3 PROSPECTIVE JUROR NO. 53: Probably so.

4 THE COURT: That's what I wanted to know, exactly.

5 Any questions?

6 MR. BUCKLEY: Nothing from us, Your Honor.

7 MS. ZACK: No, Your Honor.

8 THE COURT: Thank you, sir.

9 PROSPECTIVE JUROR NO. 53: Yes, ma'am.

10 THE COURT: Just take the seat that you currently
11 occupy.

12 Next, please, No. 54. You raised your hand in
13 your response to the question of, first of all, if the
14 defendant decided not to testify, you would hold that against
15 him or her?

16 PROSPECTIVE JUROR NO. 54: Yes. I think he should
17 testify because he should prove his innocence.

18 THE COURT: That's requiring the defendant to prove
19 his own innocence. The Constitution says that's not
20 required.

21 PROSPECTIVE JUROR NO. 54: But I think it might have
22 been and --

23 THE COURT: So you couldn't put it aside?

24 PROSPECTIVE JUROR NO. 54: No.

25 THE COURT: Any questions?

1 MR. BUCKLEY: Nothing from us, Your Honor.

2 THE COURT: Just take the seat the seat you
3 currently occupy.

4 PROSPECTIVE JUROR NO. 54: Thank you.

5 THE COURT: Next, please, No. 55. How are you?

6 PROSPECTIVE JUROR NO. 55: Good.

7 THE COURT: You raised your hand in response to a
8 question that you had some connection to a prosecution
9 office.

10 PROSPECTIVE JUROR NO. 55: Yeah. My husband was
11 with the district attorney for New York City for seven years.

12 THE COURT: And was your husband's work in any way
13 connected to the kind of case that we are talking about here?

14 PROSPECTIVE JUROR NO. 55: No. It was more drugs.

15 THE COURT: Is there anything about his work that
16 would affect your judgment if you were to be on this jury?

17 PROSPECTIVE JUROR NO. 55: No.

18 THE COURT: Is that the same family members in law
19 enforcement work that you raised your hand on?

20 PROSPECTIVE JUROR NO. 55: I don't think I raised my
21 hand on that.

22 THE COURT: Family members in law enforcement?

23 PROSPECTIVE JUROR NO. 55: No. It was more the last
24 question.

25 So I would have a commitment in Montgomery

1 Court for court, and I have plane tickets a week from Sunday.

2 THE COURT: For jury service for Montgomery County?

3 PROSPECTIVE JUROR NO. 55: Yes.

4 THE COURT: We can take care of that. We will
5 notify them that you're here for jury service.

6 PROSPECTIVE JUROR NO. 55: I'm very popular.

7 THE COURT: Lightning did strike twice.

8 PROSPECTIVE JUROR NO. 55: Yes.

9 And I do have plane tickets for out of the
10 country a week from Sunday.

11 MS. ZACK: No problem.

12 THE COURT: You will be fine.

13 Any questions?

14 MR. BUCKLEY: I believe there may have been
15 regarding a personal interest in a criminal case. Did I get
16 that wrong?

17 PROSPECTIVE JUROR NO. 55: You got that wrong, yes.

18 MR. BUCKLEY: Sorry about that. My mistake.

19 PROSPECTIVE JUROR NO. 55: I don't have that.

20 THE COURT: Thank you.

21 Next, please. No. 57, you raised your hand.
22 You have friends or family members in law enforcement, the
23 prosecution office?

24 PROSPECTIVE JUROR NO. 57: Yeah. It was just an
25 uncle, a medical malpractice lawyer.

1 THE COURT: Is there anything about his work and the
2 fact that he's your uncle that would affect your judgment if
3 you were to be on this panel?

4 PROSPECTIVE JUROR NO. 57: No, Your Honor.

5 THE COURT: Was that the only time you raised your
6 hand?

7 PROSPECTIVE JUROR NO. 57: Yes, ma'am.

8 THE COURT: Any questions, counsel?

9 MR. BUCKLEY: Nothing from us, Your Honor.

10 MS. ZACK: Nothing from the United States.

11 THE COURT: Thank you, sir. Please take your seat.

12 Yes, ma'am. How are you?

13 PROSPECTIVE JUROR NO. 58: Good.

14 THE COURT: No. 58.

15 You raised your hand a couple of times. You
16 had a negative experience with law enforcement. What was
17 that?

18 PROSPECTIVE JUROR NO. 58: I've had two instances
19 where on the report they completely lied, once just about one
20 fact, another about the entire incident.

21 THE COURT: Involving you?

22 PROSPECTIVE JUROR NO. 58: Yes. Well, one was
23 someone I was with. The other with me. So it's just kind
24 of, you know.

25 THE COURT: Was this recent?

1 PROSPECTIVE JUROR NO. 58: Three years ago and eight
2 years ago.

3 THE COURT: Were these federal or state law
4 enforcement?

5 PROSPECTIVE JUROR NO. 58: Not federal, for sure.
6 It was state people.

7 THE COURT: Did it have anything to do with anything
8 that looks like the issues in this case?

9 PROSPECTIVE JUROR NO. 58: No, no.

10 THE COURT: Would that in any way affect your
11 judgment if you were to be on this jury?

12 PROSPECTIVE JUROR NO. 58: No.

13 THE COURT: You understand that all law enforcement
14 officers are people?

15 PROSPECTIVE JUROR NO. 58: Exactly.

16 THE COURT: And there are some really good ones and
17 some really bad ones and all points in between. You
18 understand that?

19 PROSPECTIVE JUROR NO. 58: I do.

20 THE COURT: And would you be able to make an
21 individual assessment of the credibility and reliability of
22 each one after they testify and you've heard all of the
23 evidence?

24 PROSPECTIVE JUROR NO. 58: Yes.

25 THE COURT: And not in thinking, well, you're a law

1 enforcement guy. I don't believe a word you said, or I
2 believe everything you say?

3 PROSPECTIVE JUROR NO. 58: Right.

4 THE COURT: Could you make that kind of individual
5 credibility assessment after they testify?

6 PROSPECTIVE JUROR NO. 58: I could.

7 THE COURT: All right. And you would?

8 PROSPECTIVE JUROR NO. 58: I would.

9 THE COURT: All right.

10 You also indicated that you would have
11 difficulty if the defendant chose not to testify?

12 PROSPECTIVE JUROR NO. 58: Correct.

13 THE COURT: If I instructed you that our law, it's
14 in the Constitution if a defendant chooses not to testify,
15 you may not consider that fact in deciding guilt, you must
16 disregard it entirely, you cannot hold it against the
17 defendant, could you, would you follow that instruction?

18 I just need an honest answer.

19 PROSPECTIVE JUROR NO. 58: Yeah. I mean, I guess it
20 would depend, if I can be honest, so --

21 THE COURT: Depend on? It can't depend. You have
22 to be able to say "I'll look at all the evidence."

23 PROSPECTIVE JUROR NO. 58: I would definitely do
24 that.

25 THE COURT: And I'll apply the Court's instructions.

1 And if that instruction includes -- and it will -- if the
2 defendant chooses not to testify, you cannot hold that
3 against the defendant. You cannot consider it. Would you
4 follow that?

5 PROSPECTIVE JUROR NO. 58: I would.

6 THE COURT: Even if it was your preference --

7 PROSPECTIVE JUROR NO. 58: It wouldn't be easy, but
8 I would.

9 THE COURT: That's okay.

10 PROSPECTIVE JUROR NO. 58: Yeah.

11 THE COURT: This is not an easy process.

12 PROSPECTIVE JUROR NO. 58: No.

13 THE COURT: Would you make that commitment?

14 PROSPECTIVE JUROR NO. 58: I would.

15 THE COURT: Let's assume that the government
16 produced and presented some evidence of the defendant's
17 guilt, and let's assume he didn't testify; but the
18 government's burden is to produce evidence beyond a
19 reasonable doubt. And the standard is evidence of the sort
20 and amount that would convince you in making a decision in
21 the most important of your own affairs.

22 When you get married.

23 PROSPECTIVE JUROR NO. 58: I'm sorry?

24 THE COURT: Who to get married to.

25 PROSPECTIVE JUROR NO. 58: Right.

1 THE COURT: I'm not going to marry this guy. Am I
2 going to take this job? Am I going to buy this house? The
3 most important of your own affairs.

4 So the government -- so you got the
5 hypothetical, it's only a hypothetical. The government's
6 produced some evidence of guilt and the defendant chooses not
7 to testify, and I instruct you that you cannot return a
8 verdict of guilty unless all of you find that the government
9 has proven guilt beyond a reasonable doubt, and you cannot
10 consider the defendant's decision to remain silent. Would
11 you --

12 PROSPECTIVE JUROR NO. 58: Yes.

13 THE COURT: -- apply that standard?

14 PROSPECTIVE JUROR NO. 58: I would.

15 THE COURT: You would not be tempted to reduce that
16 burden because are you really would like to hear the
17 defendant testify?

18 PROSPECTIVE JUROR NO. 58: No.

19 THE COURT: All right.

20 Questions?

21 MR. BUCKLEY: There was another issue, Your Honor,
22 fair and impartial regarding the subject matter.

23 THE COURT: I think we just talked about that.

24 It does involve children. Nobody likes that.

25 PROSPECTIVE JUROR NO. 58: Right, yeah.

1 THE COURT: Nobody likes sexual exploitation. But
2 the standard, the burden on the government doesn't change
3 because these are the allegations. Can you apply them the
4 same, with the same rigor regardless of the subject matter?

5 PROSPECTIVE JUROR NO. 58: Yeah.

6 MR. BUCKLEY: Briefly, Your Honor.

7 Good afternoon, ma'am. Regarding the
8 discussion about following the Court's instructions, if you
9 heard evidence in this case that caused you to feel that
10 following the Court's instructions would make you angry and
11 feel that an injustice was being done, can you commit here
12 and now to still follow those instructions even if it
13 produces that result in your view?

14 PROSPECTIVE JUROR NO. 58: I could.

15 MR. BUCKLEY: Okay. Thank you, ma'am.

16 THE COURT: Any questions?

17 MS. ZACK: Nothing.

18 THE COURT: Thank you.

19 Take the seat you occupied.

20 Next, please. Come on up No. 59. How are you?

21 PROSPECTIVE JUROR NO. 59: Good. How are you?

22 THE COURT: Let me find where you raised your hand.
23 Do you have some connection to criminal law work?

24 PROSPECTIVE JUROR NO. 59: Yeah. My cousin's
25 husband is a sheriff or was a sheriff for L.A. County.

1 THE COURT: Is there anything about -- did your
2 cousin share with you many of the details of his work?

3 PROSPECTIVE JUROR NO. 59: No. He never spoke about
4 his job.

5 THE COURT: Is there anything about his work and the
6 fact he is your cousin that would raise a concern about your
7 ability to be fair and impartial?

8 PROSPECTIVE JUROR NO. 59: No.

9 THE COURT: I think those are the only times you
10 raised your hand.

11 PROSPECTIVE JUROR NO. 59: I think I raised my hand
12 also in connection to if I was ever a part of the agency that
13 had prosecution or law enforcement. I used to work for the
14 TNRCC.

15 THE COURT: Which one?

16 PROSPECTIVE JUROR NO. 59: TNRCC, the predecessor to
17 the TCQ.

18 THE COURT: Yes, sir.

19 PROSPECTIVE JUROR NO. 59: And they had a section
20 there for criminal investigation that sometimes I was an
21 investigator, but just, you know, right with our
22 environmental entity. Sometimes they used our investigations
23 to prosecute.

24 THE COURT: Is there anything about that work that
25 would affect your judgment if you were to be on this jury?

1 PROSPECTIVE JUROR NO. 59: No.

2 THE COURT: Any other questions?

3 MR. BUCKLEY: Nothing from us, Your Honor.

4 MS. ZACK: Nothing.

5 THE COURT: Thank you, sir. Just take the seat you
6 occupy.

7 Next, please. No. 62, how are you, sir?

8 PROSPECTIVE JUROR NO. 62: I'm good.

9 THE COURT: You are toward the end of the alphabet,
10 so thanks for being patient.

11 You raised your hand in response to a question
12 about significant hardship.

13 PROSPECTIVE JUROR NO. 62: Yes.

14 THE COURT: What was that?

15 PROSPECTIVE JUROR NO. 62: Next Tuesday I am leaving
16 on a family vacation.

17 THE COURT: What time Tuesday?

18 PROSPECTIVE JUROR NO. 62: 10:00 a.m., I believe
19 that's when my flight is.

20 THE COURT: And is this all prepaid?

21 PROSPECTIVE JUROR NO. 62: Yes.

22 THE COURT: Okay.

23 Could you rearrange your flight and arrive the
24 next day if you had to?

25 PROSPECTIVE JUROR NO. 62: No. My whole family is

1 going at the same time.

2 THE COURT: Thank you for letting us know, sir.

3 Any questions, counsel?

4 MR. BUCKLEY: Nothing from us.

5 MS. ZACK: No.

6 THE COURT: Thank you, sir.

7 Next.

8 PROSPECTIVE JUROR NO. 64: Hello.

9 THE COURT: Hello. No. 64, thank you for coming up.

10 You raised your hand in response to a question about having
11 difficulty being fair given the subject matter.

12 PROSPECTIVE JUROR NO. 64: Yes. I was a victim of
13 sexual abuse when I was 10 and 11 years old, and that played
14 a very huge role in my life. And as soon as I heard the
15 allegation --

16 THE COURT: Could you be fair in this case?

17 PROSPECTIVE JUROR NO. 64: Yes. That's my concern.
18 It's something that I had to bring up. I'm still shaking
19 inside, but I had to be honest. It has played a major role
20 in my life.

21 THE COURT: And I appreciate your honesty.

22 Given the subject matter, are you the right
23 juror for this case?

24 PROSPECTIVE JUROR NO. 64: I don't think so.

25 THE COURT: All right.

1 Questions?

2 MS. ZACK: No, Your Honor.

3 MR. BUCKLEY: No, Your Honor.

4 THE COURT: Thank you. Just take the seat you
5 currently have.

6 And last, with this part anyway, No. 65.

7 PROSPECTIVE JUROR NO. 65: Hi.

8 THE COURT: Sorry to keep you waiting.

9 PROSPECTIVE JUROR NO. 65: No. That's okay.

10 THE COURT: And you raised your hand in response to
11 a question about --

12 PROSPECTIVE JUROR NO. 65: Being affected by a
13 felony. My brother, when he was 23, was asked to carry a
14 package back, and it turned out it was drugs. He went to
15 jail for federal court for a year, I think. He has been
16 fine. He has been an outstanding citizen ever since.

17 THE COURT: Did you believe he was treated fairly or
18 unfairly?

19 PROSPECTIVE JUROR NO. 65: I wasn't at the court, so
20 I don't know.

21 THE COURT: So you don't know?

22 PROSPECTIVE JUROR NO. 65: No.

23 THE COURT: Is there anything about what you
24 described that would affect your judgment if you were to be
25 on this jury?

1 PROSPECTIVE JUROR NO. 65: I don't think so. It was
2 a long time ago.

3 THE COURT: And a very different set of
4 circumstances.

5 PROSPECTIVE JUROR NO. 65: Right.

6 THE COURT: Go ahead.

7 PROSPECTIVE JUROR NO. 65: I'm sorry. I raised my
8 hand for another reason.

9 THE COURT: What was the other one?

10 PROSPECTIVE JUROR NO. 65: I am a doctor at MD
11 Anderson, and I blocked all my patients out for this week so
12 I could do this. If it runs until Monday into Wednesday, I
13 have 65 patients whose lives would be changed.

14 THE COURT: Let's not overstate. Doctors take calls
15 for each other all the time. Doctors get sick.

16 PROSPECTIVE JUROR NO. 65: The doctor who would
17 cover for me has her own clinic on Monday, so it would be
18 very difficult.

19 THE COURT: Is there another doctor?

20 PROSPECTIVE JUROR NO. 65: I do T-cell Lymphoma of
21 the skin, and it's a little --

22 THE COURT: I understand there is lots of
23 specialized --

24 PROSPECTIVE JUROR NO. 65: I want to do this. I
25 want to help with the trial.

1 THE COURT: Would you be able to get coverage? MD
2 Anderson I know well.

3 PROSPECTIVE JUROR NO. 65: On Monday, no, on Monday,
4 no.

5 THE COURT: You're confident of that, because I'm
6 not. I believe that doctors cover for each other.

7 PROSPECTIVE JUROR NO. 65: They'd have to cancel all
8 the appointments.

9 THE COURT: They'd have to reschedule.

10 PROSPECTIVE JUROR NO. 65: Reschedule, right.

11 THE COURT: Could that be done, because people get
12 sick?

13 PROSPECTIVE JUROR NO. 65: You know, it's a
14 hardship. Some people are flying in from out of the country.

15 THE COURT: They'd have to be notified today.

16 PROSPECTIVE JUROR NO. 65: Yeah.

17 THE COURT: And you could do that and reschedule
18 them?

19 PROSPECTIVE JUROR NO. 65: I couldn't.

20 THE COURT: Somebody could.

21 PROSPECTIVE JUROR NO. 65: My scheduler's on
22 vacation.

23 THE COURT: Do you have somebody else who is taking
24 over for scheduling in her absence?

25 PROSPECTIVE JUROR NO. 65: It would be a hardship

1 for the patients. For me it's no problem.

2 THE COURT: I understand that, and I appreciate your
3 concern for your patients; but you understand we can't have
4 people who do specialized work, exempt them from jury
5 service?

6 PROSPECTIVE JUROR NO. 65: I know. I understand
7 that.

8 THE COURT: And we appreciate that understanding.

9 It is not easy for anybody, and we appreciate
10 the impact on others.

11 PROSPECTIVE JUROR NO. 65: It would be quite a bit.
12 Some of them are getting chemotherapy --

13 THE COURT: I appreciate that.

14 PROSPECTIVE JUROR NO. 65: -- and specialized
15 treatment.

16 THE COURT: Thank you for letting us know.

17 PROSPECTIVE JUROR NO. 65: Hopefully the trial will
18 be over, but --

19 THE COURT: We will do our best to be efficient, but
20 we must be thorough.

21 PROSPECTIVE JUROR NO. 65: Yes.

22 THE COURT: Okay. Thank you, doctor.

23 PROSPECTIVE JUROR NO. 65: You are welcome. Is that
24 it?

25 THE COURT: Yes, as far as I know.

1 Any other questions that the lawyers wish me to
2 ask of the panel as a whole or other individuals on the
3 panel?

4 There is the one juror who was called out as
5 saying he had a particular bias or animus towards --

6 MS. ZACK: You talked to him here.

7 THE COURT: We talked to No. 34. I think we need to
8 talk to No. 34, and we've dealt with that.

9 Any other questions that you want me to ask
10 other than the catch-all question?

11 MS. ZACK: Do you have any concerns about --

12 THE COURT: Oh, no, no. We will take up -- his
13 concerns that were reflected?

14 MS. ZACK: Yes.

15 31.

16 THE COURT: Did we talk to 31?

17 MS. ZACK: We did.

18 THE COURT: Then why do we need to talk to him
19 again?

20 MS. ZACK: I am concerned because I didn't see the
21 note that I have here. He indicated that he is bipolar and
22 ADD. And I don't know if he will be able to --

23 THE COURT: I will have him up.

24 Anybody else?

25 MR. BUCKLEY: No, Your Honor.

1 THE COURT: Okay.

2 MS. ZACK: And I apologize.

3 THE COURT: May I see No. 31, please, 31. Juror 31,
4 come on up, please, sir. We have one more question to ask of
5 you.

6 MS. ZACK: No, Judge. I'm sorry. 46.

7 THE COURT: I'm sorry. 46.

8 31, have a seat.

9 46.

10 MS. ZACK: Sorry, Your Honor.

11 THE COURT: Sorry to bring you back, sir.

12 PROSPECTIVE JUROR NO. 46: That's quite all right.

13 THE COURT: We don't mean to pry, but we need to
14 know this.

15 PROSPECTIVE JUROR NO. 46: Sure.

16 THE COURT: You noted on your form that you were
17 bipolar and had some form of ADD. Are you taking medication?

18 PROSPECTIVE JUROR NO. 46: Yes, I am.

19 THE COURT: Does that medication control your
20 symptoms?

21 PROSPECTIVE JUROR NO. 46: Yes.

22 THE COURT: Does the medication have any side
23 effects, whether they are sedating or -- I just don't know
24 what you are taking.

25 PROSPECTIVE JUROR NO. 46: Okay.

1 THE COURT: Does it have side effects that would
2 impact your ability to hear and absorb information and
3 process it and make decisions?

4 PROSPECTIVE JUROR NO. 46: No. I will be able -- my
5 mentality, I can function fine. I can listen and comprehend.
6 The worst I get is just to make sure my electrolytes are in
7 balance because of one of the medications.

8 THE COURT: And I make, for people who are, for
9 example, diabetic, bring a snack if you need to.

10 PROSPECTIVE JUROR NO. 46: Okay.

11 THE COURT: Bring a drink with electrolytes. If you
12 drink sports drinks or electrolyte drinks in order to
13 maintain balance, bring it on in.

14 PROSPECTIVE JUROR NO. 46: Yes, ma'am.

15 THE COURT: Does that help you?

16 PROSPECTIVE JUROR NO. 46: Yes. Thank you.

17 THE COURT: Any questions?

18 MS. ZACK: No, Your Honor.

19 PROSPECTIVE JUROR NO. 46: Thank you very much.

20 THE COURT: Thank you.

21 I will ask the catch-all question, also now do
22 the strikes, excuse people for hardship, then we can do
23 your -- after we do challenges for cause you can do your
24 peremptories and we will figure out how big the panel is and
25 how many you get on both sides.

1 (In open court)

2 THE COURT: Ladies and gentlemen, Chapter 3 of this
3 process. Thank you for your patience as we worked through
4 Chapter 1 and 2. The good news for you is Chapter 3 is the
5 last chapter of this part of the book.

6 You have now all had some time to think. I am
7 going to ask you what, for reasons that will immediately
8 become apparent, we call the catch-all question.

9 Is there anything that you have not yet shared
10 with us of any concern that you have about your ability to be
11 fair and impartial if you are selected to serve on this jury?
12 If you have already shared it with us, you don't need to do
13 it again.

14 Anything that has come to your mind since you
15 were up here, or if you didn't come up here, since you have
16 been sitting here. I see one hand, two hands. Come on up
17 one at a time.

18 Anybody else?

19 (No response)

20 THE COURT: The rest of you, please go outside, wait
21 in the hallway. We will be as fast in picking the jury as
22 possible. Don't go anywhere, because if we do need to talk
23 to any of you more, the entire process is going to grind to a
24 halt while we find you and bring you in. So just hang in the
25 hallway. We'll try to make it fast.

1 Yes, sir.

2 PROSPECTIVE JUROR NO. 46: My father, he was for a
3 time an attorney for the Potter County courts in defense.

4 THE COURT: Is there anything about his work or his
5 relationship to you that would affect your judgment if you
6 were picked for this jury?

7 PROSPECTIVE JUROR NO. 46: No. I just wanted to be
8 clear and honest in my relationship.

9 THE COURT: Thank you. You, too, can wait outside.

10 PROSPECTIVE JUROR NO. 46: Yes, ma'am. Thank you.

11 THE COURT: Yes, sir. No. 28.

12 PROSPECTIVE JUROR NO. 28: I haven't mentioned, I
13 have a planned vacation for Saturday. I won't be here next
14 week.

15 THE COURT: Yes, you will if you are on this jury.

16 Would you be able to reschedule your vacation?

17 PROSPECTIVE JUROR NO. 28: No, ma'am. It's like a
18 family --

19 THE COURT: Can you postpone it two days, or is it
20 all prepaid?

21 PROSPECTIVE JUROR NO. 28: It's all prepaid.

22 THE COURT: Thank you for letting us know.

23 Are the only people in the courtroom now
24 interns?

25 MS. ZACK: Those are ours.

1 THE COURT: Do the parties invoke the rule?

2 MR. BUCKLEY: Yes, Your Honor.

3 MS. ZACK: Yes.

4 THE COURT: Parties and the lawyers must instruct
5 all their clients and witnesses on the effect of the rule.

6 MS. ZACK: We will have to make a call. The two
7 British officers are upstairs hanging out. We explained what
8 the rule is.

9 THE COURT: You will have that chance. Let's get
10 this part done.

11 All right. Can we agree on any of the
12 challenges for cause or hardship excuses?

13 MR. BUCKLEY: No. 1.

14 THE COURT: Only if you are challenging him for
15 cause, striking him. Why don't you get back at counsel table
16 and we can do it on the record.

17 (In open court)

18 THE COURT: No. 1, any disagreement about
19 challenging this one for cause, striking him for cause?

20 MS. ZACK: No, Your Honor.

21 THE COURT: All right. I agree. No. 1 is stricken.
22 Next.

23 MR. BUCKLEY: There was a question of eligibility on
24 No. 4, Your Honor.

25 THE COURT: Yes. The question was felony conviction

1 for welfare fraud some years ago.

2 Any objection to excusing her given that doubt?

3 MR. BUCKLEY: No objection.

4 MS. ZACK: No objection.

5 THE COURT: She, too, is gone.

6 CASE MANAGER: 4?

7 THE COURT: That's 4, yes.

8 Next.

9 MR. BUCKLEY: Move to challenge 10, Your Honor.

10 THE COURT: Any objection?

11 MS. ZACK: No, Your Honor.

12 THE COURT: All right. I agree, removed.

13 Next.

14 MR. BUCKLEY: Move to challenge 11.

15 THE COURT: This is the one who --

16 MS. ZACK: No objection.

17 THE COURT: Yes. I agree. Stricken.

18 Next.

19 MR. BUCKLEY: As to No. 14, no objection as to
20 hardship.

21 THE COURT: Any disagreement, Ms. Zack? He's got
22 vacation.

23 MS. ZACK: No, Your Honor.

24 THE COURT: That he sort of forgot about until the
25 very end.

1 MR. BUCKLEY: Move to challenge No. 16.

2 THE COURT: Any objection?

3 MS. ZACK: No objection, Your Honor.

4 CASE MANAGER: 16?

5 THE COURT: 16, 1-6.

6 MR. BUCKLEY: Move to challenge No. 27.

7 THE COURT: Any objection?

8 MS. ZACK: No objection, Your Honor.

9 THE COURT: I agree.

10 Next.

11 MR. BUCKLEY: We have no objection to excusing 28.

12 THE COURT: Any objection? Family vacation.

13 MS. ZACK: No objection, Your Honor.

14 THE COURT: I agree.

15 Next.

16 MR. BUCKLEY: Move to challenge 34 for cause.

17 THE COURT: Any objection?

18 MS. ZACK: No objection.

19 THE COURT: I agree. We're on a roll.

20 Any other through 46?

21 MR. BUCKLEY: No objection to excising 41 on
22 hardship.

23 THE COURT: I don't remember --

24 MS. ZACK: No objection.

25 THE COURT: That's fine.

1 Next.

2 MR. BUCKLEY: Pardon me, Your Honor. I know we
3 passed this, but move to challenge No. 19.

4 MS. ZACK: We would object, Your Honor.

5 THE COURT: We will come back to No. 19.

6 Next.

7 MR. BUCKLEY: Move to challenge No. 47.

8 THE COURT: Any objection?

9 MS. ZACK: No objection.

10 THE COURT: I agree.

11 MR. BUCKLEY: Move to challenge No. 48.

12 THE COURT: Any objection?

13 MS. ZACK: No objection.

14 THE COURT: I agree.

15 Next.

16 MR. BUCKLEY: Move to challenge No. 50.

17 THE COURT: Any objection?

18 MS. ZACK: No objection.

19 THE COURT: Next.

20 MR. BUCKLEY: Move to challenge No. 52.

21 THE COURT: Any objection?

22 MS. ZACK: No objection.

23 THE COURT: I agree.

24 Next.

25 MR. BUCKLEY: Move to challenge No. 53.

1 MS. ZACK: No objection.

2 THE COURT: I agree.

3 Next.

4 MR. BUCKLEY: Move to challenge No. 54.

5 THE COURT: Any objection?

6 MS. ZACK: No objection.

7 THE COURT: I agree.

8 Next.

9 MR. BUCKLEY: We have no objection to excusing 62 on
10 hardship.

11 THE COURT: Any objection?

12 MS. ZACK: No objection.

13 THE COURT: I agree.

14 MR. BUCKLEY: Move to challenge No. 64.

15 THE COURT: Any objection?

16 MS. ZACK: No objection.

17 MR. BUCKLEY: I believe the government said no
18 objection.

19 MS. ZACK: No objection. I'm sorry, Your Honor.

20 THE COURT: All right. Thank you. I agree.

21 So the only one that has moved on the part of
22 the defendants to challenge for cause that the government has
23 not agreed to is No. --

24 MS. ZACK: 19.

25 THE COURT: -- 19, correct.

1 MR. BUCKLEY: And I would also note, Your Honor, as
2 to 65.

3 THE COURT: Let's stay with 19 for a moment.

4 What's your basis, and then I will hear the
5 response.

6 MR. BUCKLEY: Our recollection on this juror, Your
7 Honor, is that she had kids of her own. She stated she had
8 kids of her own and she was subject to being emotional. She
9 thinks she can be fair. She's a scientist. But I believe
10 she indicated that if she was the defendant she would not
11 want herself on the jury. That's our recollection.

12 THE COURT: Response.

13 MS. ZACK: Your Honor, we have no recollection that
14 she said she would not want to be on the jury. I believe
15 that when asked if she could be fair and impartial, she very
16 much told this Court she could be fair and impartial; and I
17 don't believe that was how she answered that question about
18 being on the jury.

19 THE COURT: She credibly said -- this is a
20 professor. She's a scientist, self-described, and she is.
21 By credentials, she's a professor at Rice. She has a Ph.D.
22 in biology and evolution. She is a disciplined thinker. She
23 described herself as such or agreed with that
24 characterization.

25 She credibly said she would be fair, would be

1 fair, not could be but would be. She understood how
2 important it was, and she would do it.

3 So I think that at the end of the day she
4 credibly said that she would be a fair and impartial juror,
5 and I am not going to strike her for cause.

6 MR. BUCKLEY: Yes, Your Honor.

7 THE COURT: So that's overruled.

8 Anybody else on behalf of the defense?

9 MR. BUCKLEY: Well, the only one is No. 65. We do
10 not object to --

11 THE COURT: Okay. Go ahead.

12 MR. BUCKLEY: 65 is a physician at MD Anderson, and
13 we do not object.

14 THE COURT: On substantial hardship. She's the
15 doctor who said it was going to hurt her patients. And I
16 don't mean to minimize her concern at all.

17 MS. ZACK: No. I don't think we are going to get
18 there.

19 THE COURT: Can we excuse her for hardship so that
20 she is not having to be subject to other jury calls as well
21 next week?

22 MS. ZACK: Yes.

23 THE COURT: All right. Very good.

24 Are there any challenges for cause on the part
25 of the government that have not been already covered?

1 MS. ZACK: No, Your Honor.

2 THE COURT: Great.

3 Lisa, how far are we going to get if we pick
4 14? And just to be clear, the ones who were gone are 1, 4,
5 10, 11, 14, 16, 27, 28, 35 -- 34, I'm sorry. Bad x'ing.
6 34 -- 35 is fine -- 40, 41 --

7 MS. ZACK: No one struck 40.

8 THE COURT: I thought we struck 41, too?

9 MS. ZACK: We struck 41.

10 THE COURT: We struck 41, not 40. Again, I marked
11 through it and then marked through it. That's why I am doing
12 this.

13 47, 48, 50, 52, 53, 54, 62, 64 and 65.

14 MS. ZACK: Yes, Your Honor.

15 MR. BUCKLEY: Yes, Your Honor.

16 THE COURT: All right. Got that, Lisa?

17 MS. ZACK: Your Honor, we were just informed that
18 there is a juror in the hallway on the phone discussing which
19 jurors are going to be picked.

20 THE COURT: Okay. Bring that juror in here, that
21 panel member. Let's make sure they're not already stricken
22 before we go on.

23 MS. ZACK: No. 26.

24 THE COURT: 26, he's not. Bring him in. Thank you.

25 No. 26.

1 PROSPECTIVE JUROR NO. 26: Yes, ma'am.

2 THE COURT: We have heard a report that you were
3 speculating to somebody on the phone about which jurors would
4 be picked. Is that correct?

5 PROSPECTIVE JUROR NO. 26: No. I said I don't know,
6 I have not been picked; but we're at the end of the voir
7 dire.

8 THE COURT: And have you discussed with anybody or
9 allowed them to discuss with you anything about the case?

10 PROSPECTIVE JUROR NO. 26: No, ma'am.

11 THE COURT: That's what we needed to know. I just
12 needed to be sure. Thank you.

13 Any questions, counsel?

14 MR. BUCKLEY: No, Your Honor.

15 MS. ZACK: No, Your Honor.

16 THE COURT: Thank you, sir. Apologize for bringing
17 you in.

18 PROSPECTIVE JUROR NO. 26: That's fine.

19 THE COURT: I just needed to be careful. We are
20 just being careful.

21 CASE MANAGER: So to go with the standard 10 and 6,
22 we would go to No. 39.

23 THE COURT: How many jurors are left, how many panel
24 members?

25 Yes, sir?

1 MR. BUCKLEY: I didn't want to interrupt Your
2 Honor's inquiry, but I was wondering if there would be a --

3 THE COURT: If there would be what?

4 MR. BUCKLEY: An alternate.

5 THE COURT: Oh, we are going to have 14 jurors. We
6 are picking 14.

7 MR. BUCKLEY: Understood, Your Honor.

8 MS. ZACK: We are up through 39?

9 THE COURT: Right.

10 CASE MANAGER: Then we start getting into other
11 numbers. There's a bunch stricken shortly after that, 16
12 that are un-struck past 39.

13 THE COURT: I'm sorry?

14 CASE MANAGER: There is 16 that are not struck that
15 are past No. 39.

16 THE COURT: So if we wanted to give extra strikes
17 and keep the proportion the same, 10 and 6, how far would we
18 go, two extra strikes?

19 CASE MANAGER: That would be 12 and 8.

20 THE COURT: 12 and 8. Does that work?

21 MR. BUCKLEY: Fine with us, Your Honor.

22 THE COURT: All right.

23 CASE MANAGER: To No. 44.

24 THE COURT: All right.

25 MR. BUCKLEY: The additional strikes can be used

1 within a certain zone, Your Honor?

2 THE COURT: Unless there is an objection.

3 MR. BUCKLEY: Not from us.

4 THE COURT: All right. Very good.

5 Okay. How long do you want?

6 MR. BUCKLEY: To complete our strikes, Your Honor, I
7 believe we can be done in 10 minutes.

8 THE COURT: Good.

9 Do you have your room?

10 MR. BUCKLEY: We won't mind more time, but I'm
11 trying to be honest.

12 THE COURT: I assume you always are, Mr. Buckley.

13 CASE MANAGER: He doesn't have a room yet.

14 THE COURT: I know he doesn't, but the government
15 needs to leave and the interns need to leave, unless you want
16 to use our jury room. Why don't you go to the jury room and
17 the government can stay here.

18 MR. BUCKLEY: We have a room to the side, Your
19 Honor, also.

20 CASE MANAGER: I haven't given you the key. We
21 still have a jury out there, so I prefer not.

22 THE COURT: I will check back in 10 minutes. Be
23 ready then. I want Mr. Gandy be able to participate if he
24 wants to, if you want him to and he wants to.

25 MR. BUCKLEY: He does, Your Honor.

1 THE COURT: Do you need a break before we bring the
2 jury back in?

3 CASE MANAGER: There's a bathroom in the jury room.

4 MR. BUCKLEY: I don't believe he does.

5 THE COURT: Let's have the Marshals escort him in
6 until he is finished in the bathroom, and then you all can
7 meet with him, and the Marshals will be right outside the
8 jury room. Does that work?

9 MR. BUCKLEY: Yes, Your Honor.

10 THE COURT: Thank you, sir. Appreciate it.

11 (Recess taken)

12 THE COURT: Ms. Eddins, have you shared with the
13 lawyers the jurors who have been selected to serve on this
14 case?

15 CASE MANAGER: I have.

16 THE COURT: Are there any objections?

17 MR. BUCKLEY: No objections.

18 MS. ZACK: No, Your Honor.

19 THE COURT: Bring the panel in, please.

20 What I propose to do is go through the -- seat
21 the jury, give them instructions and preliminary
22 instructions. I don't know how long that's going to take,
23 but you asked for about 20, 25 minutes. We should get
24 through opening today, okay, so you need to be ready.

25 MR. BUCKLEY: And for the Court's information, mine

1 may be substantially shorter than that.

2 THE COURT: Are you going to open at this point?

3 MR. BUCKLEY: I will open prior to the state putting
4 on their case, if that was the Court's question.

5 THE COURT: That's my question.

6 Bring in the jurors.

7 (Jury panel enters courtroom)

8 THE COURT: You may be seated as soon as you are in
9 your place. Please be seated, ladies and gentlemen.

10 It took a while, but I finally figured out the
11 right way to ask the question, not is there anybody who is
12 not back; but are the same people who were sitting next to
13 you before we broke for this phase still sitting next to you?
14 No empty places, right?

15 Okay. I am going to call out the numbers of
16 the people who have been selected to serve on this jury. As
17 you hear your name called, please go up to the jury box and
18 be seated as indicated and directed by Ms. Eddins.

19 No. 2, No. 5, 9, 15, 18, 20, 22, 23, 24, 26,
20 29, 30, 31, 36.

21 Ladies and gentlemen, those of you whose number
22 were not called, thank you. Wait, wait. We couldn't have
23 done this without you. Your time here was well spent, and we
24 are deeply appreciative.

25 You are released for the day, but keep

1 checking. You may be called for another panel, and you must
2 check, as previously instructed, in order to keep up with the
3 messages. With that, you need not check out with anyone;
4 safe travels home, and thank you again.

5 Those of you who are going to serve as our jury
6 in this case, please remain standing, raise your hand to take
7 the oath that will enable you to serve as jurors.

8 Ms. Eddins, please administer the oath.

9 CASE MANAGER: Do you solemnly swear or affirm that
10 in the case of the United States versus Jason Gandy, the
11 defendant, you will a true verdict render according to the
12 law and the evidence?

13 JURORS: "I do."

14 THE COURT: Ladies and gentlemen, please be seated.

15 I am now going to give you preliminary
16 instructions that will govern your conduct as jurors in this
17 case. We will then directly go, depending on the time, to
18 opening statements by the attorneys and then you will be
19 excused for the day. You will have to return tomorrow and
20 every day that we are in court no later than 9:00 o'clock.
21 You have to be here by 9:00.

22 When you come back, before you leave today you
23 are going to get these paper badges swapped out for more
24 durable plastic badges. You will get shown to the jury room,
25 which will be your home away from home.

1 When you arrive in the morning and you are
2 waiting for the rest of the jury to assemble, do not talk
3 about the case at all with each other, and I am going to
4 amplify that on my instruction. We will have breakfast for
5 you, and it will be muffins or bagels or breakfast tacos,
6 something like that, maybe some fruit, and we will also have
7 snacks in the jury room, granola bars, trail mix, gold fish,
8 things like that that you may help yourself to during the
9 day. We want you well fed and energetic. You may bring
10 drinks with you into the jury room as long as they're not
11 obtrusive and they don't destruct. We have a full
12 refrigerator and a microwave and coffee maker in the jury
13 room. We will have coffee ready when you come.

14 If you want to bring lunch from home, I would
15 recommend that highly. It's much more efficient; it helps
16 things go faster. We have a refrigerator. You can store
17 whatever. We have got a place to microwave; it's yours to
18 re-heat. So we try to be accommodating and make this as easy
19 for you as possible, and we need you to be here on time
20 because we can't start until every single one of you is here.
21 So if one of you is late, look around you and do the same
22 math, it's that many hours that we're taking, so do your
23 best.

24 If at any time you can't see or hear, raise
25 your hand, pull on your ear. If I don't see you, someone

1 will bring it to my attention promptly.

2 Members of the jury, now that you have been
3 sworn I will give you some instructions to guide you in your
4 participation in the trial. It is your duty to find from the
5 evidence what the facts are. You, the jurors, and you alone
6 are the judges of the facts. You will have to apply to those
7 facts the law that I, as the Court, the Judge presiding, will
8 give to you. I will give you individual written copies of
9 the instructions on the law and I will give you aloud, to you
10 orally, and you will have these copies to take with you into
11 the jury room to use during your deliberations.

12 You must follow the law that I instruct you
13 applies whether you are agree with it or not. Nothing that I
14 may say or do during the course of the trial is intended to
15 indicate or should be taken by you as indicating in any way
16 what your verdict should be.

17 The evidence from which you will find the facts
18 will consist of the testimony of witnesses, documents and
19 other items received into the record as exhibits and evidence
20 and any facts that the lawyers may agree to or that the Court
21 may instruct you to find.

22 But there are certain things that are not
23 evidence and must not be considered as evidence by you, and I
24 am going to list those things for you now.

25 One, statements, arguments and questions by the

1 lawyers are not evidence.

2 Two, objections that one or the other side may
3 make to a question is not evidence. An objection is not
4 evidence. Lawyers have an obligation to their clients to
5 make objections when they believe that evidence being offered
6 is improper under the rules or that questions being asked are
7 improper under the rules. You should not be influenced by
8 the objection or by my ruling on the objections.

9 If I sustain the objection, ignore the
10 question. If I sustain an objection to an answer, ignore the
11 answer. If I overrule the objection, treat the question and
12 the answer like any other.

13 If you are instructed that some item of
14 evidence is received for just a limited purpose, you have to
15 follow that instruction and you cannot consider it for other
16 purposes.

17 Other things that are not evidence, testimony
18 that I have excluded or told you to disregard, that's not
19 evidence. You must not consider that at all for any purpose.

20 Anything that you may have seen, heard or read
21 or observed outside the courtroom is not evidence, and you
22 may not consider it for any purpose in this case. You must
23 disregard it.

24 Anything that happened outside that is not
25 evidence in this case you may not consider. You must decide

1 this case based solely on the evidence presented here in this
2 courtroom.

3 There are two kinds of evidence, ladies and
4 gentlemen, direct and circumstantial. So what's the
5 difference? Direct evidence is direct proof of a fact, an
6 eyewitness says I saw it happen.

7 Circumstantial evidence is proof of facts from
8 which you can infer or conclude that other facts exist. For
9 example, there are tracks in the snow in the shape of feet.
10 A person made those, for an example.

11 I will give you further instructions on this as
12 well as other matters at the end of the case, but keep in
13 mind that you can consider both direct and circumstantial
14 evidence.

15 You will hear testimony of witnesses that the
16 government will call. I remind you that the defense has no
17 obligation to call any witness or to present any evidence at
18 all, it's only the government's burden; and it will be up to
19 you, no matter who calls witnesses, to decide which ones to
20 believe, which ones not to believe or how much of any
21 witness's testimony to accept or reject. And again, I will
22 give you some guidelines for determining the credibility of
23 witnesses at the end of the case, but you must know that that
24 is part of your job.

25 And as I told you at some length, this is a

1 criminal case. We try a criminal case with certain basic
2 rules that apply here. First, the defendant, Mr. Jason
3 Gandy, is presumed innocent unless and until he is proven
4 guilty. The indictment against Mr. Gandy is only
5 accusations, nothing more, it is not evidence. It is not
6 proof of guilty or anything else. Mr. Gandy starts out with
7 a totally clean slate.

8 Second, the burden of proof, you are aware of
9 this, is on the government, on the prosecution until the very
10 end of the case. The defendant has no burden to prove his
11 innocence. The defendant has no burden to present any
12 evidence. The defendant has no burden, no obligation to
13 testify. Those are critical. Because the defendant has the
14 right to remain silent, a Constitutionally protected right,
15 the law prohibits you from arriving at your verdict by
16 considering that the defendant may not have testified.

17 Third, the government must prove the
18 defendant's guilt beyond a reasonable doubt; and I am going
19 to give you more instruction on that later. But you have to
20 remember, if you have been involved in civil cases before,
21 this is different. It is a different burden, a different
22 proof requirement that the prosecution has to meet.

23 I have given you -- and I will give you
24 details I haven't given you -- I will give you detailed
25 instructions on the applicable law at the end of the case to

1 control your deliberations and decisions. That law will
2 explain the elements of each of the offenses that the
3 defendant is charged with. I have summarized for you what
4 those counts are, and the parties will go through them again
5 and the evidence that they expect to present, receive in
6 their opening statements, which will occur next.

7 The opening statements are not evidence. They
8 are merely a summary of what the parties' lawyers expect the
9 evidence will look like, but what they say is not itself
10 evidence of anything.

11 During the course of the trial, as I told you
12 repeatedly, you have to limit what you consider to the
13 evidence presented in this courtroom. That means that during
14 the course of this trial you may not speak with any witness,
15 you may not speak with the defendant, you may not speak with
16 any of the lawyers in the case, and you may not talk to
17 anybody about the case or allow anybody to discuss it in your
18 presence, and I mean communicate in any way.

19 So, to start with, the attorneys and the
20 parties' witnesses, you may find yourself in an elevator with
21 someone you recognize as a witness or one of the lawyers. If
22 that happens, give them the cold shoulder. Ordinarily small
23 talk, fine. Not here. We don't even want to create an
24 appearance of impropriety. So do not engage the attorneys if
25 you find yourselves in the hallway or bathroom or in an

1 elevator with them, even in small talk, and they will not put
2 you in an awkward position of having to engage them in small
3 talk. Maintain the stoney silence, okay.

4 Similarly, you cannot possibly know who the
5 next witnesses in the case are going to be or what they look
6 like, so hold yourself apart from other people you run into
7 in the courthouse. That's one reason we urge you to bring
8 your lunch with you and not go down to the cafeteria and
9 engage in a nice conversation and find out when we resume
10 court after lunch that the person you were talking to is the
11 next witness in the case. We don't want that to occur. To
12 avoid it, hold yourself apart from people you may encounter
13 in and around the courthouse except those you know to be
14 court personnel, such as Ms. Eddins.

15 And if you have any concern on scheduling or if
16 anybody should attempt to approach you to talk about the case
17 or communicate about it in any way before the case is
18 completely over, let Ms. Eddins know as promptly as possible.
19 She will bring any issues to my attention.

20 In addition and equally important, during the
21 course of this trial don't talk about the trial with anybody.
22 This includes your family, your friends, the people with who
23 you work. That means that when you get done today and you
24 call your family, you call your employer, you call your best
25 friend and say I got picked for a jury, they will ask you two

1 questions: How long are you going to be on this jury
2 service, how long is it going to take and what's the case
3 about?

4 You can give them your best estimate of time,
5 recognizing it's only an estimate, but you can't tell them
6 what the case is about or anything about it. There you have
7 to say, I'm not going to tell you now. We are not talking
8 about it. When it's all over, I will not be subject to this
9 restriction. But until then you can't talk about it. That
10 includes, ladies and gentlemen, not talking about the case
11 even among yourselves until you have heard all of the
12 evidence, you have heard my instructions on the law, and you
13 have heard closing arguments from the attorneys and you are
14 all together deliberating at the end of the case. Until
15 then, talk about your kids, talk about your summer, talk
16 about anything in the world but not this case. When you are
17 on breaks, gathering in the morning, wait for all to arrive.

18 And finally, the prohibition against any kind
19 of communicating about the case extends to any kind of
20 virtual communication. No texting, no posting, no
21 Facebooking, no anything. Do not attempt through any means
22 or medium, electronic or otherwise, to get any information
23 about the case that you don't get in this courtroom. Don't
24 do any research on the case on the internet or about any of
25 the people you hear referred to, none. Do not text anybody

1 about it or anybody and any social media or any kind of
2 electronic messaging at all, anything about the case, and do
3 not allow anybody to do that to you. Any attempt to violate
4 these instructions you need to let Ms. Eddins know right
5 away.

6 Don't engage in any outside reading on any
7 issue about the case or any of the people it involves. Don't
8 visit any of the places you might hear mentioned, whether in
9 person or on maps or online resources such as Google, do not
10 do it.

11 You must not read anything about the case. I
12 don't know if there is going to be any media attention. I
13 give this instruction in every case out of an abundance of
14 caution. If there is anything in the paper, don't read it.
15 If there is anything in the news or on television or radio,
16 turn it off, don't listen, don't watch.

17 You have to base your verdict on what you hear
18 and see as evidence in the courtroom and my instructions on
19 the law, not on what you might hear some reporter say or some
20 outside person might say to you.

21 Do not get on the internet or any other form of
22 electronic communication to get or provide any information
23 about the case or anybody else, anything else, any other
24 media platform. That includes every kind of search engine,
25 every kind of social media that is out there today, and I

1 can't list them all. Do not do any research into anybody,
2 the parties, the witnesses, the lawyers or the Judge.

3 The reason for these rules -- and I can't say
4 this often enough -- your decision in this case has to be
5 based on what happens inside the courtroom.

6 We are about to begin the next phase of the
7 trial. First the government is going to make an opening
8 statement. This is simply an outline to help you understand
9 the evidence as it is admitted that the government believes
10 will be presented, then the defendant's attorney plans on
11 making an opening statement. That will do the same thing
12 from his client's perspective.

13 Opening statements are not evidence, they are
14 not legal instructions, they are not instructions on the law,
15 and they're not going to be arguments, it's an outline; and I
16 have limited them to time, so if you hear me say "two
17 minutes," you'll understand why.

18 When we are finished with opening statements,
19 the prosecution will present its witnesses and the defense
20 counsel may cross-examine them. After the government has
21 presented all of its witnesses in what we call its case in
22 chief, the defendant may, no requirement, but he may present
23 evidence himself, present witnesses. And if the defendant
24 does present witnesses, the government may cross-examine them
25 and we may even have rebuttal witnesses when the cases are

1 completed otherwise.

2 After all of the evidence is in, I will
3 instruct you on the law, you will hear closing arguments from
4 the attorneys and the case will then be yours to deliberate.
5 That's our process.

6 We will generally work from 9:00 in the morning
7 until 5:00 at night. There may be occasions in which we stay
8 somewhat longer if we can finish a witness completely, which
9 might be important if the witness is from out of town or out
10 of country; but I won't keep you past 5:00 unless all of you
11 can make that work. We will try to give you advance notice.

12 We will generally take a brief break in the
13 morning, we will take about an hour for lunch, no more. We
14 may try to do it shorter, a brief break in the afternoon and
15 try to get you out of here. The nice thing about July in
16 Houston is traffic is a little bit less than when school
17 starts up again, but it's still traffic and we know that.

18 There will be times when I work with the
19 lawyers over breaks because I don't allow the testimony of
20 witnesses to be interrupted by an extensive legal argument on
21 points that may arise, and sometimes I can't decide those
22 points without hearing from the attorneys. So rather than
23 have them huddle up here and keep you in your chairs, and it
24 can go on a while and be disruptive because it interrupts
25 everything, what I may do and I often do is tell the lawyers

1 move on to a different area and we will pick it up at the
2 next regularly scheduled break. That may extend some of the
3 breaks even though we are working, but we will try to make
4 those occasions as few as possible and if they are
5 inevitable, as short as possible; but please understand that
6 we must be thorough, we must be careful and that can take
7 time.

8 Ladies and gentlemen, you may bring note pads
9 in with you, you may take notes. If you do take notes -- and
10 we'll provide the pads, they're in the jury room, and we have
11 got the pens in there for you -- if you do take notes, leave
12 your notebooks in the jury room at the end of the day, do not
13 take them home.

14 And if you do take notes, be careful that you
15 don't get so distracted taking notes that you don't pay
16 attention to what's going on. And in a group as big as
17 yours, there is a certain risk that some people may take
18 better notes than others and there is the risk that the
19 jurors who do not take notes at all or don't take good notes
20 will depend on the jurors who do take them or take better
21 notes.

22 The jury system depends on each one of you to
23 separately pay close attention in arriving at a unanimous
24 verdict as to each count. The jury system works well if each
25 of you remembers that your notes are only memory aids. You

1 should not give the notes of anyone precedence over your
2 individual, independent recollection of the evidence; and if
3 you didn't take notes or you took bad notes, you should rely
4 on your independent recollection and not be unduly influenced
5 by the notes of other jurors. Notes are not entitled to any
6 greater weight than the memory or impression of each juror as
7 to what the testimony may have been. Whether you take notes
8 or not, each of you must form and express your own opinion as
9 to the facts of the case.

10 We do have a court reporter making a record of
11 the case, but we will not have typewritten transcripts
12 available for you to use in making a decision. You will have
13 in the jury room with you all the exhibits that have been
14 admitted into evidence.

15 And remember, ladies and gentlemen, you are the
16 judges of the facts. It is your duty to base your verdict on
17 the evidence and my instructions on the law without bias,
18 prejudice or sympathy. That was the promise you made and the
19 oath you took before being accepted by the parties as jurors,
20 and the parties and the Court have the right to expect
21 nothing less.

22 So with that, ladies and gentlemen, I will
23 invite you to give your attention to the attorneys as they
24 address you in their opening statements. I have limited them
25 to the time, as I've said. I believe we will begin with the

1 government, the prosecution, and I will refer to them
2 sometimes as the government and sometimes as the prosecution;
3 it's the same.

4 Go ahead, Ms. Leo.

5 MS. LEO: Thank you, Your Honor. May it please the
6 Court.

7 THE COURT: Please use the microphone or use the
8 podium, please.

9 MS. LEO: Ladies and gentlemen of the jury, good
10 afternoon. Love, acceptance, a place to stay and money.
11 Love, acceptance, a place to stay and money, those are four
12 things that you will hear about that the minor victims in
13 this case wanted, and those are four things that the
14 defendant, Mr. Gandy, knew that the minor boys wanted.

15 THE COURT: This is not argument. Please explain
16 what you think the evidence will show.

17 MS. LEO: Yes, Your Honor.

18 The evidence will show that those are the
19 things that Mr. Gandy knew that those boys wanted when he
20 befriended them.

21 As the Court stated, this is the part of the
22 trial that is called opening statements, and it's basically
23 what both parties feel that the evidence will show as to what
24 you are going to hear throughout the trial.

25 In this case the counts of the indictment can

1 be grouped into four different sections. You are going to
2 hear about events that took place in July of 2012. The
3 evidence and the events that took place around that time
4 involved Minor Victim No. 1 and it involved him being
5 transported to London for the Olympics.

6 You will hear from Minor Victim No. 1, he will
7 testify; and basically what he will testify to is how he came
8 in contact with Mr. Gandy. He will testify that he was about
9 14 when he first met Mr. Gandy.

10 He will testify that shortly after he turned 15
11 that this defendant met him and took him to the Galleria.
12 The evidence will show that at that time the defendant gave
13 him a wad of cash because the defendant had learned from
14 Minor Victim No. 1 that Minor Victim No. 1 wanted money. He
15 was a 15-year-old boy. He came from a family of six, and
16 that for him he wanted to be able to have clothes, a
17 skateboard, be able to do different things that normal 15
18 year olds wanted to do. And the evidence will show that the
19 defendant knew that. And the evidence will show that the
20 defendant then took him to the mall, gave him money and let
21 him go spend this money on clothing and on skateboards.

22 The evidence will show that afterwards the
23 defendant took him back to his place and began an intimate
24 relationship with this 15-year-old boy. The evidence will
25 show that at the time it started and it began, this

1 relationship, that the defendant then started to ask Minor
2 Victim No. 1 if in fact he would help him in his massage
3 business.

4 The evidence will show and you will learn
5 through the trial that the defendant did in fact have a
6 massage business. However, this wasn't a normal massage
7 business.

8 The evidence will show and Minor Victim No. 1
9 will testify that the defendant told him that he would give
10 massages to other male clients and that he instructed Minor
11 Victim No. 1 on how to give these particular massages. And
12 these massages were massages in which either the client or
13 the customer, the paying customer was masturbated or the
14 defendant or Minor Victim No. 1 was. So these were massages
15 that go beyond what you would normally think of massages.
16 For a lack of a better word or for the slang term, they were
17 massages with a happy ending.

18 Ladies and gentlemen, you will hear that this
19 took place between April of 2012 and July of 2012 and that
20 the defendant would have Minor Victim No. 1 come over and
21 perform these massages, all the while he is getting paid for
22 it, and in turn he gives some of the money over to Minor
23 Victim No. 1.

24 Ladies and gentlemen, you will also hear that
25 during this time frame the defendant brought up the idea of

1 going to London with Minor Victim No. 1, and Minor Victim No.
2 1 was eager to travel.

3 The evidence will show that the defendant had
4 contacted Minor Victim No. 1 and helped him to obtain a
5 passport and helped him with getting paperwork needed in
6 order to travel.

7 The evidence will show that they did in fact
8 leave here in Houston and they traveled to England on or
9 about July the 18th of 2012. The evidence will show that
10 once they arrived in the UK they were actually not admitted
11 into the UK.

12 You will hear testimony from a border officer
13 who worked in the UK, Officer Reeves. He will testify that
14 he was the first person that basically came into contact with
15 the defendant and Minor Victim No. 1 when they arrived in the
16 UK.

17 He will testify that as his job he is supposed
18 to be trying to see which people should or should not be
19 allowed entry into the United Kingdom. He will testify that
20 on this particular occasion that he saw the defendant and
21 Minor Victim No. 1 approach him with passports. He started
22 questioning them like he would do any other passenger who was
23 getting off of a plane and trying to come into the country;
24 and when he started to ask them questions, there was some
25 discrepancies. And one of the flags that it sent out for him

1 was the fact that there was this man, the defendant, who was
2 in his mid 30s and there was this young boy who was 15, and
3 they were not related.

4 Officer Reeves will testify that in his
5 training to become a border officer he has taken classes that
6 are safeguard classes, basically the different things to look
7 for in regard to exploitation and vulnerable victims that are
8 being brought into the country.

9 Officer Reeves will testify that based off of
10 that training and the discrepancies in what the defendant and
11 Minor Victim No. 1 was telling him about, he decided that it
12 didn't seem right at that point to admit them into the
13 country. And what he did is basically he asked for a more
14 thorough investigation or Secondary.

15 You will hear from the Secondary officer, who
16 is Officer O'Donavan. That officer will testify in regards
17 to what she did when she got this case. She will testify
18 that she conducted further investigations and interviews both
19 with Minor Victim No. 1 and the defendant. She will also
20 testify that she saw the same discrepancies and even more so
21 and she caught them in different statements that they were
22 making that were not adding up.

23 At that point in time, after deciding what to
24 do, she decided that they were not going to be allowed entry
25 into the UK., and it was determined that they were going to

1 have to be put back on a plane and sent back to the United
2 States.

3 The evidence will show they were separated and
4 they were sent back to the United States on two different
5 flights. The evidence will show that when Minor Victim No. 1
6 arrived back into the United States, he came back carrying a
7 computer with him, a laptop.

8 The evidence will show that after Minor Victim
9 No. 1 came back into the country, he was interviewed at a
10 child advocacy center. The evidence will show and he will
11 testify as to what happened regarding his relationship and
12 how it came to be that he was going over to the UK with the
13 defendant.

14 The evidence will show that, and he will
15 testify, that again he met the defendant on Facebook and that
16 he was engaging in this massage business with the defendant
17 at the defendant's behest in order so that the defendant
18 would make money.

19 He will testify that the reason that they were
20 going over to the UK was that the defendant had wanted to set
21 up a massage business over in the UK and was trying to get
22 some clients and customers over there.

23 You will also hear, and Minor Victim No. 1 will
24 testify, that the laptop that he was carrying was the
25 defendant's and the defendant had asked him in fact to carry

1 it with him.

2 You will hear from Jeff Chappell, who is
3 employed through Homeland Security Investigations. He is a
4 forensic examiner. And he looked at that particular
5 computer, that laptop. He will testify that after looking at
6 the laptop, he was able to determine there were about 50
7 images of child pornography on that laptop. He was also able
8 to determine based off of what was on the laptop that the
9 laptop did in fact belong to the defendant Mr. Gandy.

10 You will also hear from Minor Victim No. 1 that
11 in order to get the business for these massages that the
12 defendant would ask Minor Victim No. 1 to take pictures of
13 himself or that the defendant would himself take pictures of
14 Minor Victim No. 1, and these pictures included pictures
15 where Minor Victim No. 1 was not wearing any clothing or very
16 minimal amount of clothing.

17 And specifically there is one image, and this
18 is an image that Special Agent Chappell found while he was
19 doing the examination on the laptop. It's a picture of Minor
20 Victim No. 1 where he is only wearing boxers, but his boxers
21 are pulled up in a way that it looks almost like a loincloth
22 that is covering his genitals.

23 You will hear evidence or you will hear
24 testimony that that particular picture was in fact posted on
25 Craigslist for purposes of getting business for this massage,

1 the massages that the defendant was performing for purposes
2 of making money.

3 Ladies and gentlemen, you will hear that at
4 this time in July, 2012 when this investigation arose after
5 the defendant and Minor Victim No. 1 came back to the United
6 States, that Special Agent Juanee Johnson with Homeland
7 Security Investigations began to look a little bit deeper
8 into the allegations that Minor Victim No. 1 made against the
9 defendant; and through her investigation she was able to find
10 other officials that came forward, other boys, and those were
11 the other victims that are in the other counts in the
12 indictment.

13 So, dealing with Count 1 is the transportation
14 of the minor, Minor Victim No. 1 to the UK for purposes of
15 prosecution or some other sexual offense.

16 Count 2 is dealing with the attempted
17 production or production of child pornography, and that's in
18 regards to the picture of Minor Victim No. 1.

19 Count 3 deals with the transportation of child
20 pornography in interstate or foreign commerce, and that is
21 the pornography that was found on the laptop computer.

22 And Count 4 deals with the sex trafficking of
23 Minor Victim No. 1. And those offenses, the time frame on
24 that is April of 2012 up through July of 2012.

25 Now, in regards to the other counts, they are

1 associated with the other boys that came out during this
2 investigation. And I will start with the Minor Victim No. 3
3 who is listed in, I believe it's Count 5 -- I'm sorry --
4 Count 6 of the indictment.

5 You will hear from Minor Victim No. 3. He is
6 now someone who is almost 30. He is going to testify that he
7 met the defendant back in 2005 in the summer. He will
8 testify that at the time he met the defendant, he was -- he
9 knew the defendant because his dad had been a client of the
10 defendant and that he also was helping his dad with some
11 construction equipment and the defendant had requested his
12 help.

13 You will hear from him, and he will testify
14 that at that time in 2005, he was confused. He was at the
15 point of his life where his sexuality, he was realizing his
16 life and his sexuality.

17 You will hear that the defendant befriended him
18 and made him feel comfortable, and you will hear the evidence
19 that at that time the defendant started a relationship with
20 Minor Victim No. 3, who then was, again, 15 years of age.

21 You will hear that after this relationship grew
22 and Minor Victim No. 3 was in love with the defendant, the
23 defendant brought up the suggestion of having Minor Victim
24 No. 3 help him with those massages. Minor Victim No. 3 will
25 testify that on one occasion that the defendant had asked him

1 if he would help massage his eye and brought him into the
2 room with him to perform this massage. You will hear from
3 Minor Victim No. 3 that at the time the defendant had told
4 him all he needed to do was just rub his eyelids and he would
5 provide him and pay him money.

6 You will hear that at that time, because Minor
7 Victim No. 3 was in love with the defendant and wanted to do
8 this, he went and he attempt to do this. And that was one
9 occasion where he did rub an individual's leg, the client's
10 leg and then left the room.

11 You will hear that shortly thereafter the
12 summer ended and Minor Victim No. 3 was no longer able to see
13 the defendant because he went back with his mother who was
14 not living here in the Houston area.

15 You will hear then the following summer when
16 Minor Victim No. 3 came back that he did see the defendant,
17 but at that time, at that point in time the defendant had
18 moved on to another boy, and that boy was Minor Victim No. 2.

19 And you will hear from Minor Victim No. 2. He
20 will testify that he met the defendant, Mr. Gandy,
21 approximately in the fall of 2005. You will hear testimony
22 from him that he had a situation come up with his parents and
23 he also was coming forward with his sexuality and his parents
24 didn't believe him about certain things and he reached out to
25 sort of to talk to different individuals online.

1 You will hear testimony from Minor Victim No. 2
2 that he met the defendant online and that the defendant told
3 him he had a place where he could stay, because at that point
4 Minor Victim No. 2 didn't want to be with his family.

5 You will hear Minor Victim No. 2 testify that
6 he then met up with the defendant and the same thing
7 happened. The defendant started an intimate sexual
8 relationship with Minor Victim No. 2, who at that time was
9 17.

10 You will hear from Minor Victim No. 2 that
11 after the sexual relationship began and after Minor Victim
12 No. 2 fell for and fell in love with the defendant that the
13 defendant approached him and asked him to help him with the
14 massage business.

15 You will hear from Minor Victim No. 2, who will
16 testify, that again there would be a client on the table, the
17 defendant would perform a massage and that now at this point
18 it was Minor Victim No. 2, he would be in the room as well
19 and would be only in his underwear; and that during the
20 massage either the defendant would be massaging the customer
21 client, and at that point the client would turn and would
22 touch either Minor Victim No. 2 or touch the defendant or the
23 defendant would touch the client or Minor Victim No. 2. So
24 there was some sort of touching, sexual touching that was
25 involved with these massages during that time frame.

1 You will hear from Minor Victim No. 2 that the
2 defendant made money from those clients and that the
3 defendant in turn gave money to Minor Victim No. 2.

4 You will hear from Minor Victim No. 2 that he
5 was with the defendant, Mr. Gandy, for about three years,
6 that three-year time span this was occurring.

7 Now, the other thing is, ladies and gentlemen
8 of the jury, at this point there is another minor victim who
9 is involved, and that's Minor Victim No. 4. And Minor Victim
10 No. 4 is in the last count of the indictment. And Minor
11 Victim No. 4 met the defendant in approximately August,
12 September 2006. Minor Victim No. 4 was an individual who
13 also, about his junior year in high school, came out to his
14 parents that he was gay. Minor Victim No. 4's family did not
15 take kindly to that, and basically he got into a fight with
16 them, left and wound up going, getting into a relationship
17 with an older man.

18 At some point he finds himself being in a
19 situation, that is Minor Victim No. 4, where he didn't have a
20 place to stay. The older boyfriend that he had cheated on
21 him and so he is now not knowing what to do.

22 He will testify, Minor Victim No. 4, that he
23 went online and he met the defendant and that the defendant
24 told him that he had money, that he had a place to stay and
25 that he would help put him in private school because at this

1 point Minor Victim No. 4 is going to be a senior in high
2 school.

3 Minor Victim No. 4 will testify that he thought
4 that was great, he thought that was a good idea and went with
5 the defendant. Again, a very similar situation. The
6 defendant starts an intimate sexual relationship with Minor
7 Victim No. 4, and at some point shortly thereafter he
8 approaches Minor Victim No. 4 and asks him to help him with
9 these massages, again paying the minor victim, getting paid
10 by his client for a sex massage and then paying a portion of
11 that to Minor Victim No. 4.

12 Now, the evidence will show that during these
13 massages with Minor Victim No. 4 they are now taken a little
14 bit more to the extreme. Minor Victim No. 4 will testify
15 that he is now naked and he is in the massage room and that
16 there was some sort of sexual activity going on in regards to
17 either the client, him masturbating the client or the client
18 masturbating him or the defendant masturbating the client
19 while someone else, while the client is touching Minor Victim
20 No. 4.

21 He will testify that this went on for a period
22 of a full week, and at some point in time he realized that
23 it was not a situation that he should be in and realized that
24 he was basically just acting as a prostitute for the
25 defendant; and he was able to get himself away from the

1 defendant at that point in time.

2 Ladies and gentlemen of the jury, it is the job
3 of the Court to rule on all of the legal issues that come up
4 in this case and it is the job of y'all to decide all of the
5 credibility issues for all of the witnesses who take the
6 stand and testify, and it's the job on behalf of myself and
7 the staff of the U.S. attorney's office and the government to
8 prove to you the elements beyond a reasonable doubt. I am
9 hopeful after you hear all the evidence that you will in fact
10 find the defendant guilty since the government has proven to
11 you beyond a reasonable doubt that he is in fact guilty of
12 the crimes charged in the indictment.

13 Thank you.

14 THE COURT: Thank you very much.

15 On behalf of the defendant.

16 MR. BUCKLEY: Thank you, Your Honor. May it please
17 the Court, counsel.

18 Good afternoon, ladies and gentlemen of the
19 jury. The evidence will not show that Jason Gandy committed
20 the crimes that are alleged in the indictment.

21 You are going to see and hear a lot of things
22 in this case that you don't like. You are not going to like
23 them, and you are going to see things and hear things that
24 you may find and probably will find deeply personally
25 offensive.

1 But this is a case about very specific federal
2 crimes. This indictment charges very specific federal
3 crimes. And the evidence will show that Mr. Gandy did not
4 travel with a minor to engage in prostitution or other
5 illegal sexual activity. The evidence will show that Mr.
6 Gandy did not produce or attempt to produce material that is
7 defined under federal law as child pornography.

8 The evidence will show that Mr. Gandy did not
9 knowingly travel with material that's defined under federal
10 law as child pornography. And the evidence will show that
11 Mr. Gandy did not engage in the offense defined under federal
12 law as sex trafficking.

13 This is a fairly simple and straightforward
14 case when you really break it down, and I am going to give
15 you, I think, a very brief framework about what I think the
16 evidence will show from our perspective, and it's going to be
17 very short.

18 Much of this case has to do with four young men
19 who made a conscious decision to engage with Mr. Gandy, and
20 they deliberately worked to make themselves enticing to Mr.
21 Gandy, and they did this for a number of reasons, some of
22 them individual to each of these young men, for financial
23 support, to explore their own sexuality, for emotional
24 support, and in some cases in the pursuit of what they
25 believed was true love.

1 And you may find that Mr. Gandy's involvement
2 in these interactions was deeply offensive, and I don't think
3 there is any question that you will.

4 What the evidence will show is what many of you
5 would commonly as lay people already understand to constitute
6 statutory rape. But that's not what's charged in this
7 indictment. That's a different case for a different court
8 for a different indictment.

9 The other part of this case, of course, is not
10 just the young men, but it's Mr. Gandy himself. Mr. Gandy
11 enjoys the company of the young men and enjoys the company of
12 some young men who are under the age of consent. Some of
13 that happened in this case, but that's not the specific crime
14 that Mr. Gandy is charged with. That may be an element, as
15 you will see, of some of the crimes the federal government
16 has charged, but that's not what this case is. This is not a
17 statutory rape case.

18 Mr. Gandy used poor judgment. Let me rephrase
19 that. In many cases probably the worst possible judgment in
20 the way he related to these young men. But in his view at
21 the time, and I expect what the evidence will show, that Mr.
22 Gandy genuinely believed that he was engaging with these
23 young men in a way that they wanted it, in a way that they
24 were seeking out from him, and in no way that made them feel
25 like victims.

1 Because this case has an element and an
2 accusation of sex trafficking, let me say this. The evidence
3 in this case will not show that anyone, that any of these
4 minor complainants, these alleged minor victims, no one was
5 locked in a room, no one was ever smuggled across the border
6 without his consent, no one was ever held in a basement, no
7 one was ever prohibited from leaving a house or prohibited
8 from having a cell phone, prohibited from going to the mall.

9 This is not the sex trafficking case that you
10 hear about on the news that gives you feelings of horror.
11 That's not what these allegations are, and none of that
12 happened in this case.

13 You will hear, we expect, from the four men who
14 are listed as Minor Victims 1 through 4. And I don't know
15 yet exactly what they will tell you, but for varying reasons
16 unique to each of them they have decided to cooperate with
17 the government's case and testify in the manner that they
18 will.

19 In some cases it will be because they have
20 taken the paths of least resistance in dealing with the power
21 and the magnitude of the federal government. In at least one
22 case one of these men is seeking validation, is seeking the
23 validation of being doted on by the federal prosecutors and
24 agents who specialize in these types of cases and recognized
25 as the victim of a sex crime and a specific federal crime

1 that, frankly, didn't occur; and in at least two of these
2 cases the motivation underlying the testimony involves
3 personal resentment toward Mr. Gandy himself.

4 So I won't go on and belabor the issue except
5 to say that's our framework for the case. You will hear
6 several days of evidence on very specific federal crimes,
7 very specific; and at the end of the evidence and at the end
8 of the presentation, I will ask you to find Mr. Gandy not
9 guilty on all counts, which will be consistent with your
10 directives under the Court's instructions and within the
11 limits of the indictment.

12 I thank you in advance for your tolerance of a
13 subject matter that is difficult for all of us. Thank you.

14 THE COURT: Thank you very much.

15 May I see the attorneys here at the bench very
16 briefly.

17 (Conference before the bench)

18 THE COURT: Do you have a witness ready?

19 MS. ZACK: I think they were sent away. When you
20 said we were just going to do opening, I don't know if they
21 sent them away. I can find out very quickly.

22 THE COURT: Do you have a witness we can make a
23 meaningful start on?

24 MS. ZACK: Yes. If they're here, we have that.

25 I think they were -- like you said, we were

1 only going to do opening. We sent them back.

2 THE COURT: This is more efficient otherwise, but I
3 don't think the jury will mind going on a little bit more.
4 It's 45 minutes.

5 MR. BUCKLEY: I never complain about leaving early.

6 THE COURT: It's 45 minutes.

7 MR. BUCKLEY: I understand, Your Honor.

8 MS. ZACK: If we can have two minutes.

9 THE COURT: Is it just one? Who is it going to be?

10 MS. ZACK: Steven Reeves. He is one of the UK
11 border officers.

12 (In open court)

13 THE COURT: Ladies and gentlemen, I told you we are
14 going to be efficient with your time, and we are going to be.
15 We have a witness ready to go. We are going to start with
16 their testimony in the case. We will go until 5:00 o'clock,
17 a few minutes before, and then Ms. Eddins will take you to
18 the jury room and introduce you to your new home here and
19 show you the coffee maker and the refrigerator, the
20 microwave, the important parts, and where the bathrooms are
21 and then we will excuse you for the day. Remember, you need
22 to keep all of the instructions in mind.

23 Are we waiting or they're not here?

24 MS. LEO: Your Honor, there was miscommunication.

25 THE COURT: Okay. Not here.

1 All right. Ladies and gentlemen, due to no
2 fault of anybody but me, we are not going to have a witness
3 until tomorrow morning. So I am sure you're grief stricken
4 to have to leave 40 minutes early.

5 So Ms. Eddins is going to take you right now,
6 show you the jury room, and then, keeping in mind all of the
7 instructions, return in the morning.

8 One more thing. The temperature is pretty good
9 in here right now, but this building is showing signs of age.
10 Some days, whether it's July outside and close to 100, which
11 I understand it's supposed to be this week, it is icicles in
12 here. And people show up in this courtroom in August and
13 July wearing fur-lined boots and bringing parkas; it can be
14 cold. Sometimes not so much, it can be warmer.

15 So if you are likely to be cold in air
16 conditioning, bring a sweater or wrap in layers. If you
17 usually become warm, even in air conditioning, dress
18 appropriately. This is a formal proceeding. Flip-flops,
19 cutoffs, no thank you, but dress so then you will be
20 comfortable; and remember to follow all of the Court's
21 instructions.

22 Ladies and gentlemen, thank you again for the
23 time and the attention you have already given us and that we
24 know you will continue to give. Thank you. Follow Ms.
25 Eddins.

1 (Jury excused)

2 THE COURT: A couple of things. Remember, this is a
3 formal proceeding. Please remember to address each other and
4 your witnesses and parties as Mr. or Ms. or doctor or
5 whatever, agent, not by first names, No. 1.

6 No. 2, the government brought to my attention a
7 potential confusion or misstatement in the earlier order that
8 I issued on the suppression motion. We have corrected that.
9 I am going to issue an amended order. It does not change the
10 reasoning or the outcome at all, but it does not contain that
11 error. And thank you for pointing it out.

12 Again, no speaking objections. Don't ask for
13 bench conferences.

14 Who will your first witnesses be in the
15 morning?

16 MS. ZACK: Your Honor, we will start with the UK
17 border protection people and then we will move right into the
18 victims.

19 THE COURT: All right.

20 Any legal issues that are going to come up that
21 we know of now for the testimony of any of those individuals?

22 MR. BUCKLEY: I am not aware of any at this time,
23 Your Honor.

24 THE COURT: If you become aware of any, let me know
25 by 8:30 tomorrow morning. I will be here.

1 MR. BUCKLEY: Yes, Your Honor.

2 THE COURT: And remember, before the jury comes in
3 at 9:00 o'clock, somebody who knows what they're doing has to
4 come in. If you guys are going to be using the monitors for
5 showing evidence and anything like that, you need to have
6 your IT people here by 8:30 making sure it works everyday,
7 okay.

8 MS. ZACK: Does Your Honor have any issue with us
9 moving this way so we are facing the jury?

10 THE COURT: As long as facial expressions are not
11 used to convey anything by parties or witnesses or anybody
12 else.

13 MS. ZACK: No.

14 THE COURT: That's fine. That is fine.

15 Anything else that we need to take up today?

16 MR. BUCKLEY: I don't believe so, Your Honor.

17 MS. ZACK: No, Your Honor.

18 THE COURT: Very good. Thank you.

19 Have you gotten your room settled?

20 MR. BUCKLEY: Pardon me, Your Honor?

21 THE COURT: Do you have a room now available for you
22 to use?

23 MR. BUCKLEY: We do.

24 THE COURT: Good. And the government has it's
25 regular place.

1 All right. There being nothing further, you
2 will get this amended order later, probably tomorrow morning.

3 MR. BUCKLEY: Yes, Your Honor.

4 THE COURT: And you are excused until -- if there is
5 an issue that comes up, email Ms. Eddins, be here at 8:30.
6 If not, have your IT people, computer people here at 8:30, I
7 will be available, and we will begin as soon as the jury
8 arrives at 9:00 o'clock.

9 MR. BUCKLEY: Assuming no issues and no technical
10 issues, is the Court requesting we be here still at 8:30 or
11 9:00?

12 THE COURT: 9:00 is fine, but by 9:00 o'clock.

13 MR. BUCKLEY: Understood.

14 THE COURT: Anything else?

15 MS. ZACK: No, Your Honor.

16 THE COURT: Thank you.

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19 (Conclusion of proceedings for July 18, 2018)

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CERTIFICATION

I, Fred Warner, Official Court Reporter for the United States District Court for the Southern District of Texas, Houston Division, do hereby certify that the foregoing pages 1 through 256 are a true and correct transcript of the proceedings had in the above-styled and numbered cause before the Honorable LEE H. ROSENTHAL, Chief United States District Judge, on the 18th day of July, 2018.

WITNESS MY OFFICIAL HAND at my office in Houston, Harris County, Texas on this the 7th day of November, A.D., 2018.

/s/ Fred Warner
Fred Warner, CSR
Official Court Reporter